

Volume 3

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Laurel Beeler, Magistrate Judge

GROUSE RIVER OUTFITTERS, LTD.,)

Plaintiff,)

VS.)

NO. C 16-02954 LB

ORACLE CORPORATION,)

Defendant.)

San Francisco, California

Thursday, July 11, 2019

TRANSCRIPT OF PROCEEDINGS

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I N D E X

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PLAINTIFF'S WITNESSESPAGE VOL.MURPHY, RYAN (CALLED AS AN ADVERSE WITNESS)

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Thursday - July 11, 2019

8:28 a.m.

P R O C E E D I N G S

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(Proceedings were heard out of the presence of the jury:)

THE COURT: Let's go on the record.

I understand you have an evidence thing.

MS. GREENWALD: We have some objections to Ryan Murphy today.

THE COURT: And what are those exhibits?

MS. GREENWALD: May I approach?

THE COURT: Yes. Of course.

MS. GREENWALD: I'd like to start with Exhibit 221.

THE COURT: Okay.

MS. GREENWALD: This is an e-mail. It's about NetSuite's work for a different customer, Christmas Place; and under the Court's pretrial order at Docket 292, you held that Grouse River must make a proffer outside of the presence of the jury.

THE COURT: I understand. I wrote my own pretrial order so I'm quite aware of what's in it, but thank you. So just in case it's not clear how invested I am in the production of my own work product, I wanted to emphasize that.

So this is an e-mail -- and I wrote it -- obviously last night in my quick little order that I wrote addressing the depo, I called out the same issue.

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1 So let's look at -- can you point me to the objectionable
2 parts? Because obviously it's a multipage --

3 **MS. GREENWALD:** The entire e-mail is about
4 implementing a loyalty bundle for another customer.

5 **MR. SUSMAN:** Could I get the date of the e-mail?

6 **THE COURT:** It is July -- well, at the top of the
7 string says July 21st at 2:27 p.m.

8 **MR. SUSMAN:** Great.

9 **MS. GREENWALD:** July 2015.

10 **MR. KIEVE:** I'm sorry. Which document are you talking
11 about?

12 **MS. GREENWALD:** 221.

13 (Pause in proceedings.)

14 **THE COURT:** I think they're in order of, you know,
15 using them as opposed to six e-mails in -- or six docs in.

16 **MS. XI:** We have them on the computer.

17 (Pause in proceedings.)

18 **THE COURT:** Okay. So the issue is there are
19 functionalities in the e-mails that are identified for other
20 customers that are post going live; right?

21 **MS. GREENWALD:** No. So it's post going live for
22 Grouse River.

23 **THE COURT:** Grouse River. No, I'm just, like,
24 thinking about just timeline not just other customers.

25 And the issue that they want to introduce them is to show

PROCEEDINGS

1 intent/knowledge that the statements that they made to
2 Grouse River were false at the time they made them. I'm sure
3 that there must be functionalities in the e-mail that they're
4 talking about. You don't think --

5 **MS. GREENWALD:** They're talking about the loyalty
6 bundle and there's no fraud allegation that has to do with the
7 loyalty bundle.

8 **THE COURT:** Okay. So what's the utility of the
9 e-mail?

10 **MS. GREENWALD:** You'd have to ask Mr. Susman that.

11 **THE COURT:** No, I appreciate that.
12 Why do you want to use it?

13 **MR. SUSMAN:** Your Honor, this is an e-mail about a
14 loyalty bundle and it mentions both Grouse River and another
15 customer at the same time.

16 **THE COURT:** Could you point me to the -- it's page --
17 for pages 1 of 11, what page that references?

18 **MR. SUSMAN:** Well, it begins -- to understand the
19 e-mail, you've got to begin at the beginning, which is page 11.

20 **THE COURT:** Okay. I'm reading up.

21 **MR. SUSMAN:** And there's a man, a practice manager,
22 who writes an e-mail to find out whether there is a loyalty
23 bundle available for a customer called Christmas Place.

24 **THE COURT:** Okay.

25 **MR. SUSMAN:** And then the e-mail chain continues --

1 **MS. GREENWALD:** I'm not sure that's what it says,
2 but...

3 **THE COURT:** Well, it says "The Christmas Place follows
4 with the loyalty bundle."

5 **MR. SUSMAN:** It doesn't -- in the first place, this
6 has nothing to do with any customer complaints. It says over
7 here at the bottom of page 3 -- if you look at page 3, there's
8 an e-mail from Ryan Murphy, who's the witness. So he obviously
9 wrote this in the context of everything that came before.

10 (reading)

11 "It appears we're selling a POC," proof of concept,
12 "bundle that has defects. Doesn't meet the customer's
13 requirements," et cetera.

14 Do you see that.

15 **THE COURT:** Yes, I do.

16 **MR. SUSMAN:** Okay. And then Hoffmeister, who was one
17 of the salespeople to us, remember Hoffmeister was identified
18 as being at the presentation on November 26 (reading):

19 "For Christmas Place we knew there were gaps," blah,
20 blah, blah.

21 And this is about Christmas Place, Hoffmeister.

22 Then Ryan Murphy, Jodie Barr to Ryan Murphy (reading):

23 "The SuiteSolutions team deemed the loaded program
24 too complex and will not be taking this over after all."

25 And then we have an e-mail -- excuse me --

1 **THE COURT:** Are we going --

2 **MR. SUSMAN:** -- from Mr. Murphy, bottom of page 2
3 (reading):

4 "Loyalty bundle issues for Christmas Place."

5 Do you see that?

6 **THE COURT:** Yes, I do.

7 **MR. SUSMAN:** And then look at what he says on the top
8 of the next page (reading):

9 "Are we going to stop demoing it then because it's
10 not scalable, useable for our customers?"

11 Then look at the very next e-mail, Jodie Barr (reading):

12 "Hi, Ryan. I saw the German deli went live last
13 month. The bundle was implemented for this customer. Do
14 you know how this went and if the customer is satisfied
15 with it? Grouse River had it installed and tested also
16 many months ago. I'm assuming enough time has gone by
17 that we could get some feedback there also."

18 And then we have an e-mail from Ryan Murphy, "Okay" -- I'm
19 sorry -- from Jeff Hoffmeister who says (reading):

20 "It was also implemented for the following clients:
21 Lingerie Divas, Sustainable Supply. Can we get any
22 feedback if it's working at either of those two or the
23 German deli; and if so, what functions?"

24 And then Mr. Murphy says (reading):

25 "Okay. So Grouse River did not take the bundle.

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1 Honestly, I think we need to really evaluate if it's worth
2 demoing this bundle if it's not supported by our
3 SuiteSolutions group. That is what we are careful as to
4 setting expectations and qualifying for this bundle."

5 And that's the -- that's what I want to use it for,
6 Your Honor, to show that they were trying to get a loyalty
7 bundle to work. They couldn't get it to work at other
8 customers. This is not about a customer complaint. It's not
9 about a customer lawsuit. Grouse River -- clearly it's
10 relevant to the Grouse River case.

11 **MS. GREENWALD:** Your Honor, if I may.

12 **THE COURT:** Just give me a second. I'm just reading.

13 (Pause in proceedings.)

14 **THE COURT:** Okay.

15 **MS. GREENWALD:** Well, to start, there's no fraud
16 allegation about the loyalty bundle.

17 Second, that statement of work is incredibly clear about
18 the loyalty bundle that Grouse River purchased and it's not the
19 loyalty bundle that's discussed in this document. This
20 document -- I mean, it specifically says "Grouse River did not
21 take the bundle."

22 **MR. SUSMAN:** Your Honor --

23 **MR. KIEVE:** In point of fact, Grouse River did take
24 the bundle.

25 **MR. SUSMAN:** Well, that's --

PROCEEDINGS

1 **MS. RAY:** No, they did not.

2 **MS. GREENWALD:** According to the statement of work --

3 **MR. SUSMAN:** That may be a disputed issue whether
4 Grouse -- we say Grouse River did take the bundle. They can
5 argue Grouse River didn't.

6 **THE COURT:** Okay.

7 **MR. SUSMAN:** In any case, Your Honor pointed out to
8 the jury the first thing, you can infer facts from other facts,
9 that circumstantial evidence is as good as direct evidence. It
10 is circumstantial evidence that they were trying to get this
11 bundle to work as late as July, months after we went live and
12 they still couldn't get it to work and thought they should stop
13 demoing it.

14 **MS. GREENWALD:** There's --

15 **MR. SUSMAN:** That's circumstantial evidence that it
16 wasn't working at the time it was represented to us that it was
17 working and included in what we were buying.

18 **MS. GREENWALD:** There's no fraud allegation about the
19 loyalty bundle.

20 **THE COURT:** I understand, but that doesn't matter.
21 That part doesn't matter because what I think the point that --
22 and I'm not saying I'm going to let it in. I'm just thinking
23 out loud.

24 **MR. SUSMAN:** Yes.

25 **THE COURT:** The idea is there are functionalities -- I

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1 mean, again, look, I would just say it's no smoking gun, let me
2 just say that, as far as, like, it doesn't really matter on
3 some level because what it shows, in my mind -- and I'm just
4 trying to figure out since there is something about
5 Grouse River, I'm just thinking about what the arguable
6 relevance could be, which is a different issue about whether it
7 comes in.

8 **MS. GREENWALD:** Your Honor --

9 **THE COURT:** So the e-mail says -- let me finish.
10 Okay? Because I just want to think it out. This is how we
11 think things out -- I think things out.

12 The idea is that there are gaps in a bundle solution that
13 you guys dispute whether Grouse River actually purchased,
14 although, you know, I do accept your level of understanding of
15 what Grouse River did and didn't purchase so I'm mindful of
16 that, but I don't know -- you know, I know I don't know as a
17 matter of fact so there's a dispute of fact.

18 And then the issue is there's an implementation where
19 there were gaps and representation from Mr. Murphy, who's being
20 careful and saying, "Well, then, are we going to stop demoing
21 it because it's not usable?"

22 And someone says, "It went live and was implemented and
23 Grouse River did it too. We can get some feedback."

24 Then that's -- and then Mr. Murphy, again being careful
25 and it seems like it's an example of his approach to problem

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1 solving, which is if things don't work, test them, consider
2 whether you want to do something with it; and if it's not
3 working -- you know, again, I don't totally understand how it
4 hurts you based on that. The relevance seems tangential at
5 best if I accept your representation about facts.

6 I wonder if some of the -- you know, again, just looking
7 for solutions to allow points to be made because a lot of
8 things have gone your way in the litigation and we want to make
9 sure the scales are balanced, it seems to me that some of the
10 beginning part of the e-mail -- you know, you have a witness on
11 the stand. You put the e-mail in front of him. You don't
12 necessarily show all of it to the jury. You characterize some
13 of the beginning of it because you're allowed to lead. You're
14 allowed to lead with foundation questions even on direct;
15 right? You lead until it matters but this, of course, is
16 cross-examination.

17 You lay some foundation questions:

18 Isn't it true that you were evaluating a bundle called
19 such and such? If you don't remember, here's the e-mail. Why
20 don't you look at the bottom of it. Refresh your recollection.
21 I want to ask you a few questions about it. You know, turning
22 your attention to --

23 And I think it comes in, you know, is it -- and then you
24 ask your direct questions:

25 You know, this is the bundle you were evaluating?

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1 Yes.

2 Turning your attention to this e-mail chain, is this also,
3 you know, something that you were discussing in the context of
4 Grouse River?

5 Yes.

6 And then go through some of those e-mails here. I mean,
7 that seems like a fair way of handling it.

8 **MR. SUSMAN:** There's not a question on the documents
9 that I can't ask him.

10 **THE COURT:** Yeah.

11 **MR. SUSMAN:** He's an adverse witness. I can do it
12 without a document --

13 **THE COURT:** Exactly.

14 **MR. SUSMAN:** -- but I don't want them jumping up and
15 then saying, "Oh, well, wait a second. There's a document
16 here." I'll do that that way. That's better.

17 **THE COURT:** Because I think information about
18 evaluating problems, especially given the slight tether to
19 Grouse River, allows for allowable line of questioning. I'll
20 trust Mr. Susman to manage the document appropriately.

21 The witness can refresh his recollection. When you get to
22 the stuff that matters when it gets more closely tethered, you
23 can always redact the document and only put in the relevant
24 parts of the e-mail string when we true up the exhibits.

25 **MS. GREENWALD:** We also have an objection to a

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1 demonstrative between Mr. Murphy and Mr. Swan. I can give you
2 a copy.

3 **THE COURT:** Sure. That would be great.

4 You know, as Mr. Susman pointed out yesterday, not in
5 precisely these words, a ham sandwich can be a demonstrative.
6 I mean, basically, when I was struggling with some of the other
7 stuff, if something will help -- will this help you with your
8 testimony? Yes. That's kind of the end answer.

9 Okay.

10 **MS. GREENWALD:** So we would argue that this should be
11 excluded under 403 and isn't a proper demonstrative. They have
12 taken snippets from e-mails and basically rewritten them and
13 paraphrased them, taken them out of context. There's no dates.
14 They do not link to trial exhibits. They don't say who sent
15 them, when they were said. It's completely misleading.

16 **THE COURT:** So how do you -- yeah.

17 **MR. SUSMAN:** I --

18 **THE COURT:** You plan to use it kind of the way Ms. Ray
19 used her summary of exhibits yesterday?

20 **MR. SUSMAN:** I'm going to just -- the numbers were for
21 their benefit. If she would -- if they would appreciate a
22 Version 2 has no numbers, has no people listed.

23 I am entitled to ask the witness whether he knows whether
24 any of those people said those things. He is coming here --
25 most of the people who are there worked for him. He could say

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1 "I know they said it" or "They didn't say it."

2 **THE COURT:** Okay.

3 **MR. SUSMAN:** I can ask the question without a
4 demonstrative. I could write it up on the board, but it would
5 take awhile for me to write those. It's demonstrative aid.

6 I'm not going to say someone -- I'm going to ask him
7 whether they were said.

8 **THE COURT:** So normally the way -- so I just want to
9 think about this in the context of another -- I'm just
10 thinking.

11 Normally every single point is tethered to an exhibit,
12 which this is, and I assume that you have the --

13 **MS. GREENWALD:** May I respond to that?

14 **THE COURT:** Yeah. Okay. I'm asking a question,
15 though, of Mr. Susman first.

16 **MS. GREENWALD:** Okay.

17 **THE COURT:** Okay. So usually when you have a
18 demonstrative, you have every single point tethered to an
19 actually underlying exhibit, and then you ask about it and you
20 display things one at a time:

21 I'm turning your attention to this exhibit, which is the
22 underlying exhibit. Are you aware of this exhibit?

23 And then you demo, you know, the point from the exhibit on
24 your demonstrative, and that's totally fair. I'm a little
25 concerned, to echo your point, which is that untethered to

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1 exhibits, it's a little bit of a sandbagging of a witness in a
2 way that I don't think makes the demonstrative helpful. Of
3 course, you could ask the questions.

4 **MR. SUSMAN:** Here's why I want to do it, Your Honor.

5 **THE COURT:** Okay.

6 **MR. SUSMAN:** In the interest of time, if he admits,
7 "Yes, that statement was made," that can come out of my
8 questioning of him. I don't have to go further. If he says,
9 "I don't know" or "I deny it was made," then I have the
10 document right there. We can talk about it.

11 **MS. RAY:** It's in the document.

12 **MS. GREENWALD:** Your Honor, the problem is that --

13 **MR. SUSMAN:** All right. I can handle it --

14 **MS. RAY:** Initially it's in the document. He doesn't
15 need to say the document exists.

16 **MR. SUSMAN:** I won't use -- I won't use the
17 demonstrative. I'll ask the questions.

18 **THE COURT:** You may be able to use it in closing
19 argument if you get -- if all the documents are in and then the
20 demonstrative is fair argument, I think it's a little
21 untethered to -- I do actually think when you're displaying to
22 the jury, if you show the e-mail, pulled up the relevant part,
23 highlighted it, you could ask him about it. You can still ask
24 him the questions and say -- you know, you could reference
25 exhibits or reference -- I think that's a better approach.

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1 That's fine.

2 **MR. SUSMAN:** I'll do it that way.

3 **MS. GREENWALD:** Okay.

4 **THE COURT:** So I'm handing the demonstrative back to
5 you. Thank you.

6 Okay. Anything else?

7 **MS. GREENWALD:** Mr. Susman and I think worked out some
8 other issues. We just need to confirm that on Exhibits 213 and
9 240 in the versions that are going to the jury, that the
10 highlighting that was added is removed.

11 **MR. SUSMAN:** Yes.

12 **THE COURT:** Okay. Again, that's all stuff we can do
13 at the end. You can highlight during trial, it's completely
14 fine; and just make sure -- you guys will have to work together
15 to make sure everything is okay at the end.

16 **MR. SUSMAN:** Correct.

17 **MS. GREENWALD:** Yes.

18 And we resolved -- they are introducing some new exhibits
19 that weren't on the exhibit list, which we object to, but we
20 think we worked out those issues. We just need to make sure
21 that the documents accurately reflect what they are.

22 So, Mr. Susman, with respect to 44A, that's two separate
23 documents? We would just, like, want the record to reflect --

24 **MR. SUSMAN:** I think we worked that all out.

25 **MS. GREENWALD:** I think we did with respect to all of

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1 them except 44A. It's two separate documents and you're
2 putting them together as if it's an attachment.

3 **MR. SUSMAN:** I told you I would use them as separate
4 documents and I will assign --

5 **MS. GREENWALD:** Okay. I just wanted to confirm --

6 **THE COURT:** You can call them 44A and 44B, or
7 something like that --

8 **MS. GREENWALD:** That's fine.

9 **THE COURT:** -- in your final binder and it totally
10 doesn't matter.

11 **MR. SUSMAN:** Right.

12 **THE COURT:** Okay. Thank you.

13 **MS. GREENWALD:** Thank you.

14 **THE COURT:** All right. So let's call in the jury.

15 And, Elaine, you can tell them we were actually doing
16 business to make the trial go smoother so they don't think
17 we're keeping them waiting, which we totally are.

18 Okay.

19 (Proceedings were heard in the presence of the jury:)

20 **THE COURT:** Good morning, folks.

21 I'm sure Elaine told you, but we were actually busy
22 working on some evidence issues. I'm mindful of your time.
23 Hopefully this will make things go a little smoother.

24 Everyone may be seated.

25 Grouse River has another witness, but I just wanted to let

MURPHY - DIRECT / SUSMAN

1 you know this is both parties' witnesses. Sometimes in a
2 trial, as you have figured out at this point, the plaintiff
3 goes first and after the plaintiff puts in all of the evidence,
4 the defendant goes. But here when one witness is both
5 parties', they both examine so we don't have a repeat later on.
6 So I just wanted to let you know that the next witness is both
7 parties' witnesses on both parties' witness list.

8 All right. Mr. Susman -- oh, Elaine will first swear in
9 the witness.

10 **THE CLERK:** Thank you.

11 If you can please stand and raise your right hand, please.

12 **RYAN MURPHY,**

13 called as a witness for the Plaintiff, having been duly sworn,
14 testified as follows as an adverse witness:

15 **THE WITNESS:** Yes.

16 **THE CLERK:** Please be seated.

17 Would you please state and spell your first and last name
18 for the record.

19 **THE WITNESS:** Yeah. Ryan Murphy, R-Y-A-N,
20 M-U-R-P-H-Y.

21 **THE CLERK:** Thank you.

22 **DIRECT EXAMINATION**

23 **BY MR. SUSMAN:**

24 **Q.** Good morning, Mr. Murphy. I'm Steve Susman. I represent
25 Grouse River. We have never met before, have we?

MURPHY - DIRECT / SUSMAN

1 **A.** No.

2 **Q.** In fact, I don't think you met any of Grouse River's
3 attorneys before, have you?

4 **A.** I have not, no.

5 **Q.** Okay. You have -- not in this case, but you have
6 testified before; correct? This is not your first time to be a
7 witness?

8 **A.** It is.

9 **Q.** It is your first time to be a witness --

10 **A.** Correct.

11 **Q.** -- in court? Have you ever given a deposition before?

12 **A.** I have not.

13 **Q.** Okay. So since this is your first time, it's important
14 that you understand my questions. If you want me to repeat
15 them, I will repeat them. If you do not hear -- I do not want
16 you answering a question that you do not hear, and I'm going to
17 try to let you finish whatever answer you want to give. Okay?

18 **A.** Okay.

19 **Q.** So we'll get through this.

20 We are calling you, as we are entitled to, as an adverse
21 party witness. You understand what that means. I can at this
22 time cross-examine you. I'm allowed to do that under the rule.
23 You understand that?

24 **A.** Yes. I've been informed.

25 **Q.** Your LinkedIn résumé says you were the practice director

MURPHY - DIRECT / SUSMAN

1 for retail at NetSuite from July 2008 to July 2017; is that
2 correct?

3 **A.** So I was director of retail and professional services for
4 a period of time while I was at NetSuite, but I held multiple
5 roles while I was at NetSuite during that period.

6 **Q.** Okay. And then you left NetSuite in July 2017 for about
7 18 months and rejoined them in January of this year; correct?

8 **A.** That's right.

9 **Q.** You are now the director of restaurant hospitality?

10 **A.** Correct.

11 **Q.** What does that mean?

12 **A.** Yeah. So I'm the director of professional services for
13 restaurant and hospitality. It's a new industry that was
14 launched in January, and so my core responsibility is to manage
15 the delivery team, which includes consultants, project managers
16 to deliver our restaurant solution. And then I'm also heavily
17 involved in developing the product that we're going to market
18 with.

19 **Q.** Delivery team, is that the same as implementation team?

20 **A.** That's right. They're one and the same.

21 **Q.** Okay. Before you left NetSuite, NetSuite was acquired by
22 Oracle for \$9.3 billion on July 28th, 2016; correct?

23 **A.** I believe it -- yeah. I mean, my memory serves that it
24 was in November and official transition happened in January,
25 but it could have been a bit earlier that the contracts were

1 negotiated.

2 **Q.** Okay. Did that acquisition have something to do with your
3 leaving for a while?

4 **A.** Absolutely not. No. So Oracle, you know, when they
5 acquire companies, sometimes they, for lack of a better term,
6 swallow them up and make enormous changes. In the event of
7 NetSuite, being that, you know, we were such a successful
8 company in terms of how we had run, you know, since 1999 or so
9 and on, they made the sole decision to allow us to operate as
10 we always have, which really was a blessing. So it had nothing
11 to do with me leaving by any means.

12 **Q.** You have before you Exhibit 240, which is -- look under
13 the stack. I have not put them in a binder, but I put them in
14 kind of the order in which I'm going to ask you. See the real
15 thick one there, the first thick one you come to?

16 **A.** Yeah.

17 **Q.** Okay. That's Exhibit 240, which is an Oracle -- can you
18 read what it is? It's an Oracle 10-K?

19 **A.** Yeah. That's the 10-K -- it's the 10-K that's filed, you
20 know, as part of NetSuite being a public company.

21 **MS. RAY:** Just for the record, it's a NetSuite 10-K.

22 **THE COURT:** It is.

23 **MR. SUSMAN:** I'm sorry?

24 **THE COURT:** So Ms. Ray just clarified for the record
25 that it's actually a NetSuite 10-K.

MURPHY - DIRECT / SUSMAN

1 **BY MR. SUSMAN:**

2 **Q.** I'm sorry. It's a NetSuite 10-K?

3 **A.** Uh-huh.

4 **Q.** For when does it -- what period of time does it end?

5 **A.** (Witness examines document.)

6 **Q.** Fiscal year ended what?

7 **A.** So the fiscal year ended in December 31st, 2014.

8 **Q.** Okay. 2014. And that was the fiscal year for NetSuite in
9 which Grouse River determined to do business with NetSuite?

10 **A.** Correct.

11 Can I pause you for a sec? Is there a way to fix this
12 light?

13 **THE COURT:** Oh. Is it too bright?

14 **THE WITNESS:** It keeps flashing. It's really -- I
15 feel like I'm on, like, a strobe light.

16 **THE COURT:** You don't enjoy the disco experience?

17 **THE WITNESS:** I don't.

18 **BY MR. SUSMAN:**

19 **Q.** Is that better?

20 **A.** No. It's like that one above me.

21 **THE COURT:** It's flickering, Elaine.

22 **THE WITNESS:** Sorry.

23 **THE COURT:** It's the bulb overhead. Can we turn it
24 off in the jury room or is it only from here?

25 **THE CLERK:** It's just from here. It's just either

MURPHY - DIRECT / SUSMAN

1 this one or this one.

2 **THE COURT:** I know these lights go off entirely --
3 right? -- because we turn them off at night. I know it will be
4 a little mood lighting, but can we -- I thought --

5 **THE CLERK:** I can check to see.

6 **THE COURT:** I'm sorry about that.

7 **THE WITNESS:** It's just it's really annoying.

8 **THE COURT:** No, no. It's really annoying.

9 **BY MR. SUSMAN:**

10 **Q.** Yeah. You don't want to sit there for a few hours with
11 that light blinking. I'm sorry.

12 **A.** No.

13 **Q.** And you did the absolute right thing. If you are
14 uncomfortable or need water or need a break or something, the
15 chair squeaks, whatever it is, your obligation is to speak up
16 and the Court will be very accommodating.

17 **A JUROR:** Are we going to see the image you're talking
18 about on the screens?

19 **THE COURT:** Sure.

20 **MR. SUSMAN:** Sure.

21 **A JUROR:** I wasn't sure.

22 **THE COURT:** Thank you for asking. We're just sorry we
23 got distracted by the lightbulb.

24 **MR. SUSMAN:** Can we have the first --

25 **THE COURT:** No, that's okay.

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1 It just won't turn off at all?

2 **THE WITNESS:** No way to turn it off?

3 **THE COURT:** Sorry. We'll call the --

4 **THE WITNESS:** Stand on the table and unscrew it.

5 **THE COURT:** Yeah, is there a way you could move your
6 chair over a little?

7 **THE REPORTER:** But you need to be closer to the
8 microphone as well.

9 **THE COURT:** You could wear your sunglasses.

10 Sorry about that. We'll check GSA and see what we can do.
11 There's just literally nothing we can do so I'm so sorry, and
12 we'll keep going.

13 **MR. SUSMAN:** Can you put up page 1 of Exhibit 240 on
14 the screen.

15 **Q.** Okay. This is -- now, this is an exhibit, so we are
16 clear, which has about 146 pages in it. So I will show page 1
17 now, but the entire exhibit will be in the jury room.

18 This is a document filed with the Securities and Exchange
19 Commission. And you're aware that it's important that what you
20 tell the public and the government in these documents -- what
21 your company tells the public and the government be accurate?
22 I mean, you're aware of that; right?

23 **A.** I mean, obviously I'm aware that there's compliance rules,
24 of course, yeah.

25 **Q.** Of course. Now, can you confirm by looking at this

1 document -- or maybe you don't have to look at it, maybe you
2 can tell us -- that at the time NetSuite was sold to Oracle for
3 \$9.3 billion, NetSuite had been losing money at the rate of
4 \$100,000 -- \$100 million a year and had never made a net
5 profit? Can you confirm that?

6 **A.** I cannot, no.

7 **Q.** Okay. Let me ask you, then, to look at page 44 of this
8 document.

9 **A.** (Witness examines document.) Okay.

10 **Q.** Are you there?

11 **A.** I am, yes.

12 **Q.** Good.

13 **MR. SUSMAN:** Could you blow up the bottom here? And
14 can you get a little more? I need to know what the dates are.
15 Can you move it out a little so we know what the dates are?

16 (Pause in proceedings.)

17 **MR. SUSMAN:** We're trying. There you go.

18 **Q.** 2014, the loss is -- do you see net loss down there? Do
19 you see that number \$100 million?

20 **A.** Yeah, I do.

21 **Q.** Okay. And that was the level of the losses by 2014, but
22 they began -- this only reports them for one, two, three,
23 four -- Ken, can you move it over at all? Is there another
24 year there? Yes, there is.

25 So 2010 the loss was 27 million, 32 million in 2011,

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1 35 million in 2012, 2013 the loss was 70 million, and in 2014,
2 NetSuite lost \$100 million. And then you've already agreed
3 with me that NetSuite, nevertheless, was sold to Oracle in 2016
4 for \$9.3 billion; right?

5 **A.** Correct.

6 **Q.** Okay. When did you first talk -- thank you, Ken. That's
7 enough.

8 When did you first talk to someone at Grouse River?

9 **A.** So the first time that I met with them was in November of
10 2013.

11 **Q.** Now, let's be very clear and precise here. You didn't
12 meet with them in person at that time, did you?

13 **A.** No. So the decision was made to have me dial in to
14 present my component of professional services being that, you
15 know, given the organization that I was overseeing and
16 traveling for a 20-minute presentation, it didn't make a lot of
17 sense.

18 **Q.** Right. And it was right before Thanksgiving too,
19 November 26th?

20 **A.** That probably factored into it, yes.

21 **Q.** Sure.

22 **A.** Sure.

23 **Q.** So could we get -- Exhibit 142, could you show us the
24 cover of 142?

25 Do you see 142?

1 **A.** (Witness examines document.) I do, yes.

2 **Q.** Forget the e-mail that's attached. Look at the
3 presentation.

4 **MR. SUSMAN:** And can we have the first page of that
5 presentation up?

6 (Pause in proceedings.)

7 **BY MR. SUSMAN:**

8 **Q.** Okay. You recognize this? This is the presentation that
9 was made to Grouse River and the four gentlemen listed there,
10 Mr. -- you see your name is not listed; right?

11 **A.** So those are the gentlemen that were actually present on
12 site during the presentation.

13 **Q.** Okay. And let's turn to the next page.

14 It shows that you were -- Mr. Owen Fayle was remote and
15 you were remote. So this -- you participated, you say, for
16 about -- it was about a 20-minute participation. You dialed in
17 on a phone basically; right?

18 **A.** Yeah. So my 20 minutes was a generality. In terms of the
19 total time that I presented, I mean, let's just -- let's go
20 with 30, 40 minutes. I can't remember, but it was --

21 **Q.** Okay. Let's turn to the next page and see if we can agree
22 on this.

23 The next page actually has the agenda, and the agenda
24 begins in the morning with introductions and overview. Then
25 there's a demonstration of ERP. ERP means what?

1 **A.** So that's enterprise resource planning. So that's the
2 financial component of the NetSuite application.

3 **Q.** Is that kind of the brain that ties everything together,
4 the hub kind of? There's a demonstrative that I think your
5 counsel has shown to the jury. Is that -- is the ERP kind of
6 the core that ties everything together?

7 **A.** It is the accounting core, of course, so that allows you
8 to -- NetSuite is a transactional system so it's an accounting
9 system. So there's applications that are more journal-entry
10 based where you're just doing debits and credits, where
11 NetSuite is a transactional-based system that ties into debits
12 and credits and all of those transactions feed into what's
13 called the general ledger.

14 So, yes, it is the hub as it pertains to capturing
15 transactions, recording your debits and credits, and allowing
16 companies to financially report on their business.

17 **Q.** Okay. And then the next entry, Mr. Hoffmeister was there.
18 Mr. Fayle dials in for a -- you were not on the phone when he
19 made his presentation. His was in the morning.

20 **A.** I was not. So the audio -- you know, it was in a big --
21 you know, it was in a conference room; right? And, you know, I
22 don't think adequate, you know, audio was provided at that
23 time. So it just -- it didn't make sense to listen through
24 because you don't -- you can't necessarily capture what's going
25 on in that room.

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1 Q. Got it.

2 And then there's a working lunch you did not attend.

3 Mr. Elliot Slivoskey makes a presentation for an hour and
4 a half about how the point of sale operates; correct?

5 A. Yes.

6 Q. And then we have you dial in at about -- supposedly about
7 3:00 o'clock. You're allowed an hour of time. You think it
8 took only about 20 or 30 minutes. And then you -- there was an
9 end-of-day wrap up which you did not participate in. You were
10 off the phone by then; correct?

11 A. Right. So I can't speak to -- I mean, I think -- you
12 know, my presentation, I believe it was right after lunch.
13 They kind of switched things around a little bit. I don't --
14 it's neither here nor there.

15 I mean, the bottom line is -- I mean, if I presented for
16 an hour, I -- I mean, there was a lot of content that I went
17 through as it pertains to service delivery and, you know, I did
18 my job to communicate that to Grouse River.

19 Q. Well, did you prepare any part of this slide deck?

20 A. Yeah. So there is a component of that slide deck that
21 highlights -- within the sales process, you have the product
22 and the demonstration, which is what this agenda outlines; and
23 then there's a service delivery component as to us explaining
24 to the customer how are we going to implement the customer and
25 providing those expectations. So there is -- there's about

1 five slides, six slides in this presentation that I went
2 through in detail with Grouse River.

3 Q. Okay. And let's see if I can't give you those slides to
4 look at. I think your slides begin -- let me see. I have it
5 written down here.

6 (Pause in proceedings.)

7 THE WITNESS: Yes. It starts on page 46.

8 BY MR. SUSMAN:

9 Q. Okay. Could we go to page 46?

10 Thank you, sir.

11 46. And your name's on it?

12 A. Uh-huh.

13 Q. And let's go to the next slide.

14 You talk about some characterizations of your global team;
15 right?

16 A. Absolutely.

17 Q. Let's look at the next page, please.

18 Okay. And the next page, is it?

19 We're just going through your section now. Okay?

20 A. That's right.

21 Q. And you talk about shared success and responsibility.

22 A. That was a critical component for the implementation.

23 Q. And the NetSuite project sponsor, that was you; right?

24 A. Yep.

25 Q. And the executive sponsor over here, was that Mr. Fallis?

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1 **A.** It was, yes.

2 **Q.** Okay. And then the project -- the first project manager
3 is a gentleman by the name of David Mason-Jocksch?

4 **A.** To my knowledge, he was the project manager throughout the
5 duration of the implementation.

6 **Q.** Okay. Next page, please.

7 And now you're talking about the sequence of events;
8 correct?

9 **A.** Yeah. So this walks through step by step how we implement
10 the project, which is critical in terms of the customer
11 understanding the stages and milestones of the project
12 implementation.

13 **Q.** All right. And then you have Go-Live is there; right?

14 **A.** Right.

15 **Q.** And there is -- I don't see any dates here or a timetable,
16 but let's move on.

17 You see this at the bottom here?

18 **A.** Uh-huh.

19 **Q.** This is some kind of NetSuite client or customer in
20 Australia that had a good experience; right?

21 **A.** Right. They are a reference customer, sure.

22 **Q.** Reference. Now, let's tell the jury what a reference
23 customer is because that's going to come up.

24 **A.** Uh-huh.

25 **Q.** A reference customer is someone you can send potential

1 customers to to find out: How's it working? Are you
2 satisfied? Are you happy with the experience?

3 **A.** That's right.

4 **Q.** And it is extremely important to NetSuite to have
5 customers who give good references; right?

6 **A.** No question. That's one of our driving factors.

7 **Q.** And when you get one, you put it like here is, just a
8 standard one that comes in a PowerPoint presentation; right?

9 **A.** Yeah.

10 **Q.** By the way, this kind of thing, these slides that you
11 prepared, you had used them before. You didn't just prepare
12 these for Grouse River. This is what you use for everyone;
13 right?

14 **A.** I mean, there were times that we customize, you know,
15 slide presentations for sure; but this was -- you know, in
16 terms of the presentation for Grouse River, you know, I had met
17 extensively -- even though I was not on site, we had met -- I
18 had met extensively with the sales team in terms of what needed
19 to be presented and, therefore, that's what the slides that we
20 prepared for them.

21 **Q.** Could we have the next page?

22 And this, again, is one of your slides, suite training.
23 This is the training program; correct?

24 **A.** It is. So it's an overview of our professional services
25 training curriculums.

1 Q. Next page. Next page.

2 Okay. Here, "What makes a successful implementation?"

3 And you list these things and the jury will have this. I'm not
4 going to ask you about each one. We'll be here forever.

5 But at the bottom of the page, there's another reference
6 from a customer, president of Precor Home Fitness; right?

7 A. Yep.

8 Q. Where were they located?

9 A. I'm not sure.

10 Q. Okay.

11 A. But it was not really relevant to the content of this
12 slide. The bullet points are actually what are important.

13 Q. Right. But the references are important because they go
14 on the format for whatever else is on the slide; right?

15 A. Sure. I mean, there's a template and then we tailor the
16 content.

17 Q. The next page, please. And could we have -- is that it?

18 I think that's it. This is just a final page; correct? I
19 mean, just the ending page?

20 A. Yeah.

21 Q. And that was your extent of your participation directly by
22 phone for 20 or 30 minutes to present your part, which we have
23 looked at --

24 A. Uh-huh.

25 Q. -- to the people at Grouse River.

1 And you know -- did anyone ever tell you that after the
2 eight-hour presentation that day, in-person presentation, that
3 Mr. Fallis and people from Grouse River went out to a very
4 lovely dinner with people from NetSuite?

5 A. I did know that, yes.

6 Q. But you weren't -- you didn't participate in that dinner?

7 A. No.

8 Q. So we're absolutely clear, you are in no position to deny
9 any representations that were made by NetSuite people other
10 than yourself because you didn't talk to Grouse River, but you
11 can't deny anything that they told the Grouse River people up
12 to the time and including that eight-hour meeting because you
13 weren't there; right?

14 A. Right. So I -- I have to go off of the content that was
15 presented in this presentation --

16 Q. Okay.

17 A. -- and the claims made therein, and there were subsequent
18 meetings. So this was just one of many meetings.

19 Q. I understand. We will hopefully get to the other
20 meetings.

21 So let me -- when was the next -- tell me the next time
22 you had a -- you had no further meetings with anyone from
23 Grouse River until the contract was signed on March 30th, 2014;
24 correct?

25 A. No. I mean, we had several conversations with Glenn and

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1 the team.

2 Q. Meetings.

3 A. I classify a call with Glenn and his management team as a
4 meeting.

5 Q. Let me put it this way: Until you walked into the court
6 today, you had never seen Mr. Fallis, had you?

7 A. But that's not -- that's really not that big of a deal.
8 This is a cloud-based software. It's not an on-premise
9 solution.

10 Q. Mr. Murphy --

11 A. So with a cloud-based software, you don't necessarily
12 always meet your clients face to face.

13 Q. Mr. Murphy, we will move it quicker, and for the jury it's
14 better, I assure you, if you answer my question yes or no; and
15 then, sir, if you need to make an explanation --

16 A. Yeah.

17 Q. -- you've got a bunch of opportunities to do it. I'll let
18 you do it. Your lawyer will get up and have a chance to
19 examine you, and she will let you do it.

20 A. Right.

21 Q. But we need to get for the record, so that we're clear
22 about the facts, yes or no when I ask a question to you that
23 can be answered yes or no. That's called being responsive.
24 Okay?

25 A. Okay.

1 Q. All right. So what was the next oral communication you
2 recall with anyone from Grouse River after November 26th?

3 A. So the next discussion that we had was a detailed scope
4 review of the functionality that Grouse River was going to
5 implement.

6 Q. When did that occur?

7 A. I don't know the specific date, but it was between this
8 presentation and the beginning of January.

9 Q. And where?

10 A. Sorry?

11 Q. Between that and where -- when?

12 A. End of January.

13 Q. Okay. And do you know who was on the conversation?

14 A. So I know that Glenn and his team, Jodie Barr was on the
15 conversation, and I can't remember any other specific people
16 that were on.

17 Q. Jodie Barr works for you?

18 A. She did not work for me at the time, no.

19 Q. Who did she work for?

20 A. She worked for a lady by the name of Nancy Roecker who was
21 another practice manager in retail.

22 Q. Okay. Why was she on the call?

23 A. So her role and responsibility -- so up until that point,
24 the practice managers, and even thereafter, we were highly
25 involved in the sales process in terms of scoping the deals.

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1 And "scoping" means deriving a level of effort of the
2 functionality that needs to be implemented so we can craft a
3 statement of work.

4 And being that, you know, the practice managers were also
5 managing teams and existing customers and so on, Jodie Barr's
6 sole function was to meet with -- meet with prospects to run
7 detailed scoping calls of the functionality that prospects and
8 customers would need to, you know, implement and use for their
9 business.

10 Q. So who was on the phone for that call? You don't know
11 exactly when it was, or do you?

12 A. I don't know. I don't have the specific date, no.

13 Q. Have you seen it referenced in any document?

14 A. Well, the document -- the document is the statement of
15 work that was the output of that call.

16 Q. So the first draft of the statement of work --

17 A. Uh-huh.

18 Q. -- was the output in that call?

19 A. That's right.

20 Q. And when was that prepared?

21 A. Again, in the beginning of January.

22 Q. The first draft?

23 A. It's my recollection that we --

24 Q. -- came to life in January?

25 A. Yeah. It's my recollection that we delivered the first

1 draft -- so, yeah, that would be at the beginning of January.

2 **Q.** And that was preceded by a call with you and Ms. Barr and
3 Glenn Fallis and maybe others?

4 **A.** Right. So we did at that point -- and I was on that
5 review call where we did a detailed statement of work
6 walk-through; right? The customer has to understand what
7 they're purchasing so we did the scoping call, you know, "Are
8 you going to use purchase orders? Are you going to use sales
9 orders?" That type of stuff.

10 And based on the statement of work, which includes -- this
11 was a bit different; right? -- where, you know, it included
12 ERP, it included point of sale, and it included eCommerce.
13 So it was a very comprehensive statement of work in terms of
14 what we were delivering.

15 But there was a call in January that walked Glenn step by
16 step as to what this contract entailed and what he would be
17 implementing. You know, primarily what was in scope and what
18 was out of scope. And Grouse River was agreeing to the
19 in-scope items.

20 **Q.** And that -- but the only written record we have of that is
21 the scope of work, the January scope of work itself?

22 **A.** So there's -- I mean, there's internal records that we
23 have at NetSuite as it pertains to managing the opportunity.
24 We also had a full professional services engagement record that
25 we kept notes internally about the calls and details and so on.

1 NetSuite is, you know, very adamant about obtaining
2 presales records so it carries over into implementation. So I
3 don't know if you have access to those, but we had numerous
4 pages of notes and documents.

5 Q. So you should be able to bring to us -- or your lawyer
6 probably will during her case, I guess -- the detailed log of
7 all communications with Grouse River prior to signing the
8 contract, when the meetings were held, when the phone calls
9 were held, and when -- and what was discussed and who was in
10 them? That's part of your corporate DNA?

11 A. Yeah. I mean, NetSuite -- so NetSuite ERP also
12 incorporates CRM.

13 Q. The answer to my question was yes? And then go ahead.

14 A. Okay.

15 Q. Yes? Was it yes?

16 A. Yes. NetSuite does keep a detailed log of everything.

17 Q. Okay.

18 A. But just to educate the jury -- because it's complex;
19 right? -- NetSuite also includes CRM, which is customer
20 relationship management. So it allows sales reps and
21 professional services folks to capture activity such as calls
22 and events. So that would -- that would have been all kept on
23 in a NetSuite application.

24 Q. Do you recall personally having any e-mails or
25 correspondence with NetSuite -- with Grouse River before the

1 contract was signed on March 30th?

2 A. There were e-mails traded back and forth, of course.

3 Q. That wasn't my question.

4 A. Yes. The answer is yes.

5 Q. You personally.

6 A. Me personally?

7 Q. Yes, sir.

8 A. I was -- I do believe I was copied on e-mails that include

9 correspondence. The majority of what -- the majority of the

10 communication we had with Glenn and team was by phone.

11 Q. Okay. By phone?

12 A. Yeah.

13 Q. And you didn't participate in all the calls?

14 A. I did. In fact, we had very important calls as it

15 pertained to the scope of the contract.

16 Q. You participated in every call?

17 A. I can't speak to that. I participated in the calls that I
18 was on.

19 Q. That's my question. You participated in some calls?

20 A. Right.

21 Q. But there were other calls you knew of that took place
22 that you did not participate in; right?

23 A. As with every prospect and customer that ever goes through
24 NetSuite, yes.

25 Q. Now, I want to show you a demonstrative that has been used

1 in this case.

2 Could we have Demonstrative 1 up?

3 Have you seen this before?

4 A. I have glanced through it, but I have not read it in
5 detail.

6 Q. Okay. When did you glance through it?

7 A. I believe I saw this for the first time yesterday.

8 Q. Your lawyer showed you some documents yesterday?

9 A. Right. This specifically because --

10 Q. Okay.

11 A. Yeah.

12 Q. You have not been in court for the testimony; correct?

13 A. No.

14 Q. And your lawyers did not tell you what was testified to in
15 court?

16 A. Absolutely not, no.

17 Q. And these are things that are in quotes on this chart, the
18 "Fraudulent Statements that Induced Grouse River to Sign the
19 Contract with NetSuite," and I'd like you to look at them
20 carefully, sir.

21 And I'm not asking you now -- so we understand the
22 question, I'm not asking you whether those statements are true
23 or false. Okay? I'm just asking you whether you have personal
24 knowledge sufficient to admit or deny whether they were said --

25 MS. RAY: Objection.

1 **BY MR. SUSMAN:**

2 **Q.** -- by anyone.

3 **A.** I can't --

4 **THE COURT:** What's the objection?

5 **MS. RAY:** So, again, the statements are incomplete
6 because they do not say when they were made and, yet, the
7 allegation includes when they were made, and he's asking the
8 witness to opine on when they were made when that information
9 is part of the allegation.

10 **THE COURT:** Actually, I think that's not --

11 **MR. SUSMAN:** Your Honor --

12 **THE COURT:** I mean, you can respond. I'll let you
13 respond first, but I don't think that's what you are doing.

14 **MR. SUSMAN:** My response is that I object to speaking
15 objections, objections that coach a witness. That's improper.

16 **THE COURT:** Okay. So I'm going to overrule the
17 objection.

18 And just to go back to what Mr. Susman said, but I don't
19 want to misquote you, he's just going to ask you whether -- not
20 whether it's true or not, just whether you know whether or not
21 it was said.

22 **MS. RAY:** On which date? The date is important.

23 **THE COURT:** Well, so does he -- well, that goes to
24 weight, not admissibility, and you can cross-examine.

25 And either you know or you don't know so don't worry about

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1 it.

2 **THE WITNESS:** I don't know.

3 **THE COURT:** Okay. Exactly. So just -- so that's
4 fine. So let's just go through and let Mr. Susman do his
5 examination.

6 **BY MR. SUSMAN:**

7 **Q.** If you knew the date, you would be a miraculous witness.
8 You would have a miraculous memory.

9 My question is: Do the statements -- can you -- are any
10 of these statements -- looking at these statements, do you
11 doubt -- do you have any doubts that they were said in writing
12 or orally -- in writing or orally?

13 **A.** I have no idea who wrote these.

14 **Q.** You have no idea whether it was said or not; right?

15 **A.** No.

16 **Q.** Okay. If these statements had been said orally or in
17 writing, would the gentlemen who, other than you, who were
18 dealing with the sales effort to Grouse River -- and by that I
19 mean Mr. Cole Waldron, Mr. Jeff Hoffmeister, Mr. -- is it
20 Mr. Meyer? -- Mr. Weiss --

21 **A.** Right.

22 **Q.** -- Mr. Fayle, Jodie, Gary Specter, who was a
23 vice president of the company? Gary Specter was a man who is
24 right under Zach -- what's Zach's last name?

25 **A.** Zach Nelson, but Gary didn't report to Zach.

1 Q. Who did he report to?

2 A. There was a couple sales managers in between.

3 Q. Okay. What was Gary's title?

4 A. He was vice president of sales for retail.

5 Q. Okay. He was involved in the sales effort; right?

6 A. Yeah.

7 Q. You have no way -- you're not coming here to deny that any
8 of that list of people said these things to Grouse River?

9 A. I can't say that.

10 Q. Okay.

11 A. I mean, these statements could have just been written by
12 anybody. I don't know.

13 Q. If they had been said by the people I mentioned, would
14 they have been authorized to say those things on behalf of
15 NetSuite?

16 A. I can't answer that either.

17 Q. Okay. Let me ask you one maybe you can answer. If you
18 knew these statements had been made to Grouse River in the
19 sales effort, would you have approved or disapproved of them
20 having been made?

21 A. I mean, I'd have to -- I'd have to read these in detail.

22 MS. RAY: Excuse me. Can I interpose an objection?

23 THE COURT: What's the objection?

24 MS. RAY: The objection is I don't know that that's a
25 question he can answer given the number, and there's only --

1 **THE COURT:** So I think your witness is doing fine in
2 saying what he does know and what he doesn't know so I'll allow
3 the question. So overruled.

4 **BY MR. SUSMAN:**

5 **Q.** Okay. And if --

6 **THE COURT:** And I think it would be quicker if you
7 just would say "Objection. Foundation." I think that's really
8 the objection, but either he does or doesn't know and so that's
9 fine.

10 **BY MR. SUSMAN:**

11 **Q.** Again, sitting here, you -- some of these people were
12 under you in the corporate chain of command; correct? You were
13 not on the sales team?

14 **A.** No. There's a segregation between professional services
15 and sales; right? You have people that sell the licensing and
16 you have departments that do the delivery.

17 **Q.** You're the delivery implementation and there's a sales
18 team?

19 **A.** That's right.

20 **Q.** All right. And so on any of these -- by the way, there
21 are a number of statements on here and we could take them one
22 by one if that would help.

23 **A.** If that benefits you, sure.

24 **Q.** Huh?

25 **A.** If that works for you, sure.

1 Q. That works for me. I mean, the question is: On each of
2 them would you have approved of saying something like that?

3 A. You'd have to give me time to read through each one.

4 Q. All right. Let's read them.

5 The first one (reading):

6 "SuiteCommerce exposes native" -- can we highlight
7 that as we go? -- "SuiteCommerce" --

8 There you go. Good.

9 This is the first one. Would you have said that?

10 A. So SuiteCommerce Advanced at that time supported that
11 functionality so that's an accurate statement.

12 Q. Okay. Right.

13 Number two, would you have said that?

14 A. (Witness examines document.) So, again, this is a general
15 statement.

16 Q. Yes or no, sir.

17 A. I can't -- then I'm not providing an answer for you.

18 Q. Okay. The next one (reading):

19 "For example, promotions can be implemented once and
20 enabled across online telephone and in-store transactions
21 to augment the core transactional capabilities and
22 customize the system to their exact requirements."

23 Same question.

24 A. Promotions can be enabled across omni-channel platform
25 within NetSuite, yes.

1 Q. I'm sorry. What was the answer?

2 A. This is an accurate statement.

3 Q. It's yes, you would have said it this way; right?

4 Next (reading):

5 "When customers appear in a retail setting, not only
6 will they be recognized but store clerks will also be able
7 to see on their point-of-sale system what is in their
8 eCommerce shopping cart or wish list as they serve them."

9 Would you have authorized that to be said?

10 A. There's not enough -- although I do recognize points of
11 this and I do know there are capabilities to display
12 information within the point of system -- point-of-sale system,
13 I don't -- by no means can I give you an answer based on the
14 context of this statement. It's totally out of context.

15 Q. Next (reading):

16 "Multichannel Business Logic: SuiteCommerce offers a
17 single back-end system for processing orders, managing
18 inventory, and generating offers. A business rule such as
19 maximum number of purchases on a sale item can be
20 implemented once and enforced across the website, in-store
21 and via telesales."

22 Is that something you would have authorized the sales team
23 to say back in their sales effort to Grouse River? Yes or no
24 or I can't give you an answer.

25 A. Again, it's -- the verbiage there where it says "purchases

1 on -- "maximum number of purchases on a sale item" is highly
2 out of context. The answer, there is a single back-end system
3 for processing orders and inventory as it applies to
4 SuiteCommerce, but the maximum number of purchases on a sale
5 item is highly out of context and I can't provide you an
6 answer.

7 **Q.** (reading)

8 "Rich Customer Profile Driving Promotions:
9 SuiteCommerce provides a single system for customer
10 history, product/item details, and promotions management."
11 Would you have authorized that to be said by the sales
12 team or not or you don't know?

13 **A.** SuiteCommerce Advanced, which is what the product was, is
14 built on the NetSuite platform.

15 **Q.** Now you're -- I think I'm entitled to --

16 **A.** Well, then these statements don't make any sense because
17 the jury has no context. Therefore, the answer is I can't
18 answer any more of these statements for you.

19 **Q.** Thank you. We'll take that answer.

20 Maybe you can do this one: Does NetSuite want its
21 potential customers to rely upon what it says its software can
22 do?

23 **A.** Say that again.

24 **Q.** Does NetSuite want its potential customers to rely upon
25 what it says the NetSuite software can do?

1 **A.** Please define "rely upon."

2 **Q.** Take it to the bank, assume it to be true, take actions
3 based upon it being true. Is that -- now do you understand
4 what "rely" means? Well, you take my definitions.

5 **A.** Yeah. Yours sounds like a guarantee. So NetSuite
6 produces material that states factually what the application
7 can do. Whether the customer decides to rely on that or not,
8 that's their decision.

9 **Q.** Would you tell the ladies and gentlemen of the jury
10 whether you agree that it would be reasonable for a potential
11 NetSuite customer to rely upon what NetSuite says?

12 **A.** Yeah. I mean, that definitely could be assumed.

13 **Q.** Would you agree with this statement: Since your customers
14 use your suite to manage critical aspects of their business,
15 any errors, defects, or other performance problems with your
16 suite could damage your customers' business and result in
17 costly litigation? Would you agree with that statement?

18 **A.** I'm not quite sure where you got that verbiage. Is it in
19 a document?

20 **Q.** You don't need to know where I got it. Do you agree with
21 it or not? If you agree with it, we don't have to tell you
22 where I got it. I think --

23 **A.** Actually, I think -- so you got it from the 10-K, and I
24 didn't produce that document so I can't agree or disagree with
25 that comment.

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1 Q. Yes. It comes -- I'll show you the page so we can be
2 fair.

3 Would you put up page 22 of Exhibit 240? And can you
4 highlight -- yeah, highlight where -- yeah, there it is at the
5 bottom. You've got it. You're on it.

6 If we see the sentence that begins "If we have any errors,
7 defects, disruptions in service," highlight that.

8 A. I don't agree with that statement.

9 Q. You do not agree with it?

10 A. So whoever wrote that was misguided.

11 Q. You mean this is false?

12 A. I would say, yes. There's a lot of components to a
13 successful implementation as it pertains to a working product,
14 and whoever wrote this obviously had no knowledge of how it
15 works. So that's unfortunate.

16 Q. All right. Are you aware that NetSuite would subject
17 itself to criminal liability for saying something in its 10-K
18 that is false? Are you aware of that, sir?

19 A. No.

20 Q. Please put up -- no, don't put it up. I can't put it up.

21 I'm now going to ask you about some statements, and I
22 will -- the question -- let me begin with the first one, quote
23 (reading):

24 "We sold this" -- and the reference is to a customer
25 loyalty program -- "as though it already works to

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1 Grouse River and we're going to use Grouse River to test
2 it," close quote.

3 Are you aware that someone said that?

4 **A.** So I am and it's inaccurate.

5 **Q.** Who said that?

6 **A.** Jodie Barr did.

7 **Q.** Okay.

8 **A.** Because I was very upset that she sent that e-mail --

9 **Q.** Okay.

10 **A.** -- because it wasn't accurate.

11 **Q.** Are you aware that someone said, someone with NetSuite
12 said -- the project manager actually said it --

13 **A.** Who was that?

14 **Q.** Mr. David Mason-Jocksch. Quote (reading):

15 "Sales really screwed us all when they sold POS for
16 firearms to have serial number controls when POS does not
17 have that capability. We should have all walked away at
18 that point. Ryan said so," close quote.

19 You're the Ryan?

20 **A.** That's right.

21 **Q.** Did you say so at that point?

22 **A.** I did not. So that e-mail is between two people, and I
23 was not on that e-mail and I did not say that.

24 **Q.** But you don't doubt that that e-mail said -- I quoted the
25 e-mail correctly; right?

1 A. Yeah, you read it correctly.

2 Q. Okay. Number three (reading):

3 "Chip and pin card processing in Canada is a known
4 gap. This functionality is not supported by the system
5 and there is enhancement approved for next release. It's
6 not something that can be fixed. It requires development
7 and Q & A verification."

8 A. Who wrote that e-mail? Who wrote it?

9 Q. Nicolai Komissarenko, senior manager, product engineering,
10 October 16th, 2014.

11 A. Can we read his subsequent e-mail that says he was
12 mistaken and it actually is included in the functionality?

13 Q. There is a -- tell me that again.

14 A. So further in the e-mail, as it becomes more recent, he
15 actually clarifies that he mistook his statement and it
16 actually is included in the functionality.

17 Q. All right. That's one I have to come back to.

18 A. Okay.

19 Q. Are you aware -- but just so we understand it, he did say
20 that but he corrects it later on; is that --

21 A. It was just fantastic that he did that.

22 Q. Okay. Are you aware that someone said -- does it help if
23 I give you the person who said it?

24 A. Any information you can give me would be super helpful.

25 Q. Would you like to see this in writing?

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1 **A.** If it helps you.

2 **Q.** No. I'm asking whether it would help you.

3 **A.** It doesn't. I just -- just knowing who wrote it just to
4 give me a frame of reference. I mean, I am your witness.

5 **Q.** All right. Karen Messick, who is project manager retail,
6 wrote (reading):

7 "They sold credit card integration with MPS and now
8 you're saying it's not supported?"

9 Do you have any doubt that she wrote that?

10 **A.** I'd like to read the subsequent statement where Branden
11 Jenkins says it does exist and we have customers relying on it.

12 **Q.** Okay. We will give you that opportunity.

13 Karen Messick again, project manager retail (reading):

14 "We have no way to integrate credit cards in Canada
15 for our customers."

16 Do you have any doubt that she said that in an e-mail?

17 **A.** She may have, but she was misguided, you know, through
18 subsequent e-mails sent by Branden Jenkins.

19 **Q.** Okay. Mr. Nicolai Komissarenko, senior manager, product
20 engineering, quote (reading):

21 "We have discovered that EMV is not part of the
22 golden image."

23 Will you tell the jury what the golden image means?

24 **A.** Yeah. Can we clarify, are these external
25 Grouse River-facing e-mails or are they internal at NetSuite as

1 we try to figure things out?

2 Q. They are -- every one I've gone over thus far is internal.

3 A. Okay.

4 Q. We didn't have them until we filed this lawsuit. They
5 were produced during discovery.

6 A. Right.

7 Q. Okay. Again (reading):

8 "We have discovered that EMV is not part of the
9 golden image."

10 What is the golden image?

11 A. Yeah. So in the point-of-sale functionality -- right? --
12 there would be the latest code image that then would be
13 deployed -- right? -- to the registers for them to use. And so
14 it's just a batch of code that is put into an image that then
15 gets imaged to the terminals that then allows the registers to
16 upsync and work with NetSuite.

17 Q. Is it the software code that --

18 A. You know, I think I answered that properly. I'm not
19 technical enough --

20 Q. Okay.

21 A. -- on that side of it.

22 Q. Do you have any doubt that that product engineer made that
23 statement on October 10th, 2014?

24 A. He said it, yeah.

25 Q. Okay.

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1 A. There's no context behind it but he said it, sure.

2 Q. Okay. Number seven, the speaker is -- the writer is the
3 project manager David Mason-Jocksch, quote (reading):

4 "The product was perceived by the customer as best in
5 class omni-channel product and it was FAR" -- capital
6 F-A-R -- "from it," close quote.

7 A. Uh-huh.

8 Q. Again, the product was perceived by the customer,
9 Grouse River, as best in class and it was far from it. Was
10 that statement made?

11 A. How do you define "omni-channel" in this context?

12 Q. I didn't use the word. Your project manager used the
13 word. How would he have thought about it? What would his
14 definition have been?

15 A. Well, that would have been NetSuite ERP, our point of
16 sale, and eCommerce all included in a single package where a
17 consumer can dial in, they can buy from the point of sale or
18 they can buy online. So it's an all-encompassing product.

19 Q. So you're not questioning whether that was said in a
20 document by a NetSuite project manager?

21 A. I haven't -- right. I mean, sure, he said it.

22 Q. Okay.

23 A. I mean, that's his own opinion.

24 Q. Quote, this is said by Mr. Mason-Jocksch, the project
25 manager (reading):

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1 "We couldn't deliver on POS" --

2 POS. Remind the jury, POS is the system that allows you
3 to sell -- make transactions in the brick-and-mortar store in
4 that retail channel?

5 A. Right.

6 Q. POS, point of sale, is the store -- it's really in a way
7 the cash register where you go to take your things to check
8 out; correct?

9 A. Right.

10 Q. Okay. (reading)

11 "We couldn't deliver on POS due to installation
12 problems. POS, ERP, serial number functionality, this was
13 only finally tested a couple of days prior to Go-Live.
14 POS hardware couldn't be configured (test) due to the NS
15 security lockdown from November to early March," close
16 quote.

17 Do you doubt whether that was said?

18 A. It was said. It's not entirely accurate.

19 Q. Okay. I'm sorry? It was what?

20 A. It was not entirely accurate but it was said.

21 Q. Tell the jury about the NS, NetSuite, security lockdown
22 from November to early March. What was that about?

23 A. So NetSuite is a publicly traded company just so you guys
24 know, or was at that time, and the architecture of the point of
25 sale was NetSuite up through Amazon cloud services down to the

1 register. In order to set up the point of sale, our functional
2 consultants had to log into AWS or Amazon Web Services to do
3 the mapping down to the register.

4 So we would set up the items in NetSuite and the IDs;
5 right? And then we would have to map that up to the Amazon
6 cloud server, and then that would then map to the items being
7 sold at the register.

8 The point of sale is a product called Retail Anywhere.
9 It's a company that we purchased I believe back in 2013. And
10 the security rules had not been put in place, and the security
11 meaning our functional consultants being able to log into an
12 external server to make changes and what have you; right?

13 NetSuite being that it's cloud based, it's a cloud-based
14 software as a service product, security is huge. We can't
15 allow for any breaches. As soon as someone breaches a
16 cloud-based software, you have serious problems.

17 And so the head of security, Chris Blum, who reported to
18 Evan, who was, you know, the brain behind NetSuite, saw that we
19 were doing this and they had to put a hold on the access to the
20 Amazon cloud servers so they could put tools in place to allow
21 my functional consultants -- or our functional consultants to
22 make changes to that server without actually having to log
23 outside the system.

24 So although it may look like a stoppage, it was actually
25 to the benefit of all of our customers and the security of all

1 NetSuite.

2 Q. Yeah. I didn't -- obviously it's to your benefit -- to
3 everyone's benefit to be secure. I'm not blaming that on
4 anyone.

5 A. Uh-huh.

6 Q. But, in fact, because there was a security lockdown from
7 November to early March, it meant that on those projects where
8 you were going through the implementation phase, which involves
9 testing and configuration and some customization, you can't
10 test during that period on your servers; right?

11 A. So that's not accurate because we're talking about setting
12 up the -- you know, the Amazon server. So there could have
13 been customers who were already set up. We could have been in
14 testing. So it's -- I don't think we have the technical
15 foresight or insight to really make that determination.

16 Q. If the security lockdown affected the people working under
17 you on implementing the Grouse River project during that --
18 November, December, January -- four-month period of time, if
19 they said it was interfering with their ability to test
20 solutions for Grouse River, would they be wrong?

21 A. I actually would argue they were because Grouse River
22 wasn't allowing us to Go-Live during their busy season, so
23 really -- being that we were under security lockdown for the
24 majority of their busy season, which was around Christmas, it
25 really didn't have a lot of impact because Grouse River --

1 Q. I didn't ask you, sir, what impact it had on Grouse River.
2 Let me try it again.

3 My question was not what impact it had on Grouse River.
4 My question is: If the people working under you, like
5 Mrs. Messick and others, were saying that this security
6 lockdown is interfering with our ability to test solutions that
7 we have developed for Grouse River, would they be wrong?

8 A. In this scenario, no. We were locked up for good reason.

9 Q. Next question, and this comes from Mrs. Messick again
10 (reading):

11 "I look forward to the time when we have a product
12 that is stable," close quote.

13 Do you know that she said that?

14 A. I do not know that, no.

15 Q. If she said it, would she be wrong in implying that your
16 product was not stable?

17 A. I think she would be wrong, yes. We had plenty of
18 customers using the product at that time.

19 Q. Excuse me. What did you say?

20 A. I said I think she would be wrong. We had many, many
21 customers using our point-of-sale product.

22 Q. Good. Now let's talk about that.

23 A. Okay.

24 Q. Which customers did you have in Canada who were using your
25 omni-channel retail POS, who was using the same thing that

1 Grouse River had agreed to acquire? Which customers? Name
2 them.

3 **A.** So we did have omni-channel customers using our product,
4 but Grouse River was our first early adopter as it applied to
5 Canada.

6 **Q.** All right. And isn't it true, sir, that a lot of those
7 customers that you talked about were affected by the security
8 lockdown too?

9 **A.** No, I don't think they were. They were already live.

10 **Q.** Can you tell the jury that some of those customers made
11 complaints just like Grouse River?

12 **A.** No.

13 **Q.** You don't know?

14 **A.** I don't know. I really don't know. I mean, I don't know.

15 **Q.** Okay. Let's continue. Quote (reading):

16 "Grouse River downsync" -- referring to the ERP, POS
17 downsync -- "on items failing due to duplicate custom
18 field errors. Development QA supposed to be
19 investigated."

20 Now, what is development?

21 **A.** What is development?

22 **Q.** Yeah. What does that mean? That's a department in
23 NetSuite, DEV?

24 **A.** Sure.

25 **Q.** Is QA a different department or is it the same?

1 **A.** No, it's one and the same; right? I mean, NetSuite
2 segregates between delivering the functional component of an
3 application on the development side of it just like any
4 software company. So, sure.

5 **Q.** Do you recall there being a problem with downsyncing ERP
6 and POS due to duplicate custom field errors?

7 **A.** When was that e-mail sent?

8 **Q.** October 7th, 2014.

9 **A.** I'm not aware of that issue, no.

10 **Q.** Number 11 --

11 **A.** And the reason being is because that was when I was in the
12 process of being reassigned to a large enterprise project. So
13 there are some communications between October and March that I
14 would not have been involved in.

15 **Q.** Okay. Quote (reading):

16 "We're basically in a position of having to apologize
17 to the customer for our broken internal processes."

18 Can you deny that that was said?

19 **A.** Who wrote it?

20 **Q.** Andrea Scully, senior project manager, professional
21 services.

22 **A.** So she wasn't involved in the project at all so that's
23 merely just her opinion.

24 **Q.** Next, what does DOA mean?

25 **A.** I don't know.

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1 Q. Have you ever heard of dead on arrival?

2 A. Oh, right. Right. Yeah.

3 Q. Have you ever heard of the initials DRT?

4 A. Yes.

5 Q. Tell the jury what DRT stands for.

6 A. I don't know exactly what it stands for. There's a lot of
7 acronyms, but it was the process that we used to escalate a
8 specific issue to make sure the customer is being taken care
9 of.

10 Q. And is DRT a -- does that mean dead right there?

11 A. I don't know.

12 Q. Okay.

13 A. No, it doesn't. I mean, it doesn't make any sense.

14 I mean, it was the process -- I mean, if we had an issue
15 and we needed to get it fixed ASAP, like today, it would be
16 DRT'd by the customer escalation team to make sure it was
17 getting worked on. So that right there doesn't make any sense.

18 Q. So serious flaw.

19 Quote (reading):

20 "This is an escalated customer."

21 Now, you know what that means?

22 A. It means a customer that we're giving special attention
23 to.

24 Q. And the escalation means it was -- like, I've seen an
25 e-mail that says "This has been escalated to Zach," for

1 example. What does that mean?

2 **A.** So I know that Glenn took it upon himself to reach out to
3 Zach as an escalation.

4 **Q.** The CEO?

5 **A.** Right.

6 **Q.** Right. So this is an escalated customer. Grouse River
7 was an escalated customer; right?

8 **A.** It was a customer that we were giving a lot of special
9 attention to to make sure that they were successful.

10 **Q.** And it says (reading):

11 "And there have been issues. The project itself did
12 not go well."

13 Did someone say that?

14 **A.** Who wrote it?

15 **Q.** Subu -- help me pronounce his last name?

16 **A.** Subu. I can't pronounce his last name.

17 **Q.** Ganesan?

18 **A.** Ganesan.

19 **Q.** Ganesan?

20 **A.** Yeah. He worked for me. I just never was able to
21 pronounce his last name very well so I apologize.

22 **Q.** That's fine.

23 **A.** But I knew Subu, so...

24 **Q.** Maybe we can call him Subu. He's not here. He wouldn't
25 be offended if we just said "Subu." Okay?

1 **A.** Fine.

2 **Q.** Is it true? Did you agree with his statement that the
3 project itself did not go well?

4 **A.** I'm very familiar. I mean, that was in the -- that was
5 towards the 2015 time frame. Yeah, so I started Lucky Brand
6 October through about March-April of 2015, and I think Subu's
7 statements are highly reflective of someone who was taking all
8 the motions to make sure a customer was happy.

9 **Q.** Okay. There's another one I've got -- again, I'm not
10 asking you why Mr. Subu said that. I'm asking you, you don't
11 disagree that he said it; right?

12 **A.** If it's in the e-mail, he said it.

13 **Q.** Okay. Quote (reading):

14 "Grouse River, Defect Number 314297, gift cards with
15 authorization code, functionality doesn't work in the
16 current release. This is held up because development
17 environment needs to be updated by Ops. They can't
18 utilize gift cards at all until this is fixed," close
19 quote.

20 Karen Messick. You don't have any question she said that?

21 **A.** When did she write that?

22 **Q.** November 10th, 2014.

23 **A.** Okay. Which customer was it for?

24 **Q.** Grouse River. Grouse River gift cards with authorization
25 code functionality doesn't work in current release.

1 **A.** Okay.

2 **Q.** (reading)

3 "They can't utilize gift cards at all until this is
4 fixed," close quote.

5 **A.** They weren't live so I'm not sure it really mattered, but
6 we were working through the formalities of getting the system
7 working. So, yeah, she said it but it's completely out of
8 context how you're framing it.

9 **Q.** I bet I can get you on this one.

10 **A.** Let's try it.

11 **Q.** If I tell you who said this, you can guess who said this.

12 **A.** I did.

13 **Q.** You did. Quote (reading):

14 "I played around with the search capability on
15 Grouse River's eCommerce website and it keeps taking me
16 back to guns regardless of what I search for. I shop
17 outdoor gear all the time and if that happened during my
18 experience, I would go to another site."

19 You said that; right?

20 **A.** When did I say that?

21 **Q.** May 6, 2015. The way I count that, that's two -- it's --
22 what? -- a month -- a little over a month after Go-Live.

23 **A.** Again, that's out of context, but I said it.

24 **Q.** Okay. Well, let me -- there's one -- this out of
25 context --

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1 A. Uh-huh.

2 Q. -- tell the jury what they need to know more about your
3 statement that on that day or about that time "I played around
4 with the search capability. It keeps taking me back to guns
5 regardless of what" -- did that happen?

6 A. Who did I write that to?

7 Q. I think it was a large group of people, but I can find it
8 for you. I'll give it to you now.

9 Can you pull up TX31, Trial Exhibit 31? Up at the top.
10 Wait a second.

11 A. It's the next page I think.

12 Q. There it is.

13 Okay. Here is the e-mail -- can we go back to the next
14 page?

15 So, look, so the jury understands and you understand,
16 Mr. Murphy, one of the horrible things about e-mail -- one of
17 the wonderful things about e-mail is it captures all
18 communications because everything we do is in e-mail; right?
19 It's terrible. But it does leave a track record when people
20 get into a dispute to figure out, you know, who said what when,
21 et cetera. That's why we are showing the jury so many e-mails.

22 A. Yeah.

23 Q. What we've got to realize about e-mails is we've got to
24 read them backwards.

25 A. Right.

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1 Q. In other words, you know, you begin at the end of the
2 document, the exhibit, for the first e-mail, then you go up and
3 you read the response to that.

4 A. Yeah.

5 Q. And it's not like you normally would read.

6 A. It's just like being forwarded an e-mail chain that you
7 have to start from the bottom.

8 Q. Right. And this is what happened. So here you say --
9 you're writing it to -- let's talk about these people.

10 A. Uh-huh.

11 Q. Mr. Iyer, Satish Iyer, who is he?

12 A. He was my manager at the time.

13 Q. You reported to him?

14 A. Yeah.

15 Q. Lawrence Schiller?

16 A. He oversaw the point of sale delivery at that time.

17 Q. Charlie?

18 A. He was the account manager.

19 Q. His class name is?

20 A. Chi.

21 Q. Like Meng? Like Ms. Xi?

22 A. Sorry?

23 MS. XI: It's Xi.

24 MR. SUSMAN: Okay.

25 THE WITNESS: He's the account manager.

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1 **MR. SUSMAN:** I'll remember that.

2 **Q.** David Mason-Jocksch.

3 **A.** Right. PM.

4 **Q.** He was a project manager?

5 **A.** Yeah. And he was still as of 2015 in May, yeah.

6 **Q.** Okay. Dinesh, how is his name pronounced?

7 **A.** Dinesh Chaurasia. So he was overseeing the eCommerce
8 operations.

9 **Q.** How do you pronounce that name again?

10 **A.** It's Dinesh Chaurasia.

11 **Q.** Chaurasia?

12 **A.** Yes.

13 Daniel Fernandez, he was an eCommerce manager. Michael
14 Perdikis was Charlie Chi's manager in account management.
15 Raymond Go was client escalations, and Michelle Gariepy was
16 above him as, you know, director of client escalations, and --
17 yeah. So that's who was on the e-mail.

18 **Q.** Client escalations?

19 **A.** Yeah. So we had a team that focused specifically on
20 making customers happy. I don't want to confuse an escalated
21 customer that -- you know, it's -- an escalated customer means
22 that we're providing extra attention to that customer to make
23 sure they're successful.

24 **Q.** And (reading):

25 "Net/Net we need" --

1 **A.** Uh-huh.

2 **Q.** You say (reading):

3 "Net/Net we need an owner to capture and direct all
4 issues via a single status sheet with owners, status,
5 estimated completion dates. This includes..."

6 And then he lists there.

7 Now, again, because the jury is going to see this in some
8 documents today and tomorrow, "owner" means you need someone to
9 be responsible, a person, a department; right?

10 **A.** Right.

11 **Q.** That's what "owner" means?

12 **A.** Yeah, exactly.

13 **Q.** Okay. And can we scroll down, please.

14 Next page.

15 And there, that's part of the same e-mail; right?

16 **A.** Yeah. So it's kind of split. It's kind of a dual purpose
17 e-mail if we're going to get super-technical about it. The
18 previous page was actually the most important where we were
19 triaging a list of additional requests made for us after
20 Grouse River Go-Live.

21 But this statement that is underlined, I'm still trying to
22 figure out how it got underlined because I don't underline
23 things, but Glenn reached out saying that when you go in and
24 type in keywords, it was bringing up different areas. And so,
25 you know, frankly I thought this would have been caught during

1 the testing phase prior to -- so this is actually after
2 Go-Live.

3 I would have thought that a customer would have tested
4 their application to see that the search results were not
5 returning the accurate values. So what I did is I went into
6 the web store and I validated what Glenn was saying, and then I
7 then communicated that over to the eCommerce team who was
8 on -- and the client escalation team to say, "Listen, we've
9 got -- you know, if this is really an issue and it's well
10 beyond Go-Live and, you know, it's just now being found, you
11 know, we need to fix it ASAP."

12 **Q.** Next statement by the project manager, quote (reading):

13 "Grouse River went live with some major problems on
14 freight charges/handling. Still an issue between SCA" --
15 that's SuiteCommerce Advanced, that's you -- "and
16 Pacejet."

17 That's one of your partners; correct?

18 **A.** Correct.

19 **Q.** That was said by the project manager. You don't have any
20 doubt that that was said, do you?

21 **A.** No, he must have said it.

22 **Q.** Okay. Quote, again the project manager (reading):

23 "They" -- referring to Grouse River -- "found MANY
24 areas," all caps M-A-N-Y -- "of incompatibility between
25 two or more of the products, such as gift/cards, serial

1 number functionalities," close quote.

2 David Mason-Jocksch project manager, professional services
3 of your group, July 7th, 2015. The project has been live for
4 several months now.

5 **A.** Uh-huh.

6 **Q.** You don't have any doubt that that was said, do you?

7 **A.** If it's in the e-mail, yes.

8 **Q.** Yes, sir.

9 Quote -- and this is from the project manager again, quote
10 (reading):

11 "The fact that POS had not been installed within
12 Canada also posed many issues surrounding credit cards,
13 legislation, taxation, ETC," close quote.

14 July 7th, 2015. You don't have any question that he said
15 that?

16 **A.** That's not accurate at all. We did have live customers in
17 Canada on our point of sales.

18 **Q.** I'm sorry? You did have what?

19 **A.** We did have live customers on the product in Canada at
20 that time.

21 **Q.** Okay. On POS?

22 **A.** Yeah, and eCommerce.

23 **Q.** Who were those customers?

24 **A.** There was a firework company and there was also a bicycle
25 company.

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1 **Q.** The name of the company? Do you recall?

2 **A.** I think it was Kaboom Fireworks. I can't remember the
3 bike. I mean, there was several. I mean, we had -- I mean,
4 there was several. I'm sure we can dig up a list for you.
5 Branden Jenkins would know.

6 **Q.** Good.

7 Again, Karen Messick (reading):

8 "Cannot issue gift cards. Gift cards SCCS dot issue
9 gift card results in empty error message and no card is
10 issued. This issue will affect every customer on 11.1 or
11 higher."

12 Another customer, I think it's Kit and Ace -- who is Kit
13 and Ace?

14 **A.** They're a Canadian customer.

15 **Q.** What do they do?

16 **A.** I can't remember. It's automotive or hardware. I can't
17 remember.

18 **Q.** She says (reading):

19 "Kit and Ace are just the immediate problems" -- "the
20 immediate needs," close quote.

21 You don't doubt she said that?

22 **A.** She wrote it. It's highly out of context --

23 **Q.** This comes from --

24 **A.** -- how it applies to Grouse River.

25 **Q.** How about this one (reading):

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1 "Grouse River, they have had issues with server
2 syncing replication since last year and from their
3 perspective, it's a never-ending issue in using the
4 product."

5 This is March 7th, 2016, a man by the name Amiel Agulo.

6 Do you know that person's name?

7 A. Huh-uh.

8 Q. It doesn't ring a bell with you?

9 A. How do you spell it?

10 Q. A-M-A-M-B -- Amiel, A-M-I-E-L.

11 A. Okay. So Amiel, yeah.

12 Q. Huh?

13 A. I've seen the name.

14 Q. You've seen the name. Do you know where he operates?

15 A. (Shakes head.) I think he was -- I think he was -- when
16 was this written again?

17 Q. 2016.

18 A. That was a long time.

19 Q. March 7th.

20 A. I think he was -- I think he worked for support in Manila
21 troubleshooting, you know, point-of-sale requests.

22 Q. Just so I understand, there's some references to people --
23 e-mails in the file from people from Manila --

24 A. Uh-huh.

25 Q. -- from South America somewhere. Where is that in

1 South America that you had people?

2 A. Uruguay.

3 Q. Uruguay and Manila. There were your employees in those
4 places working on the Grouse River system?

5 A. That's right.

6 Q. Okay.

7 A. Yeah, we -- yeah.

8 Q. Mr. Ganesan, quote (reading):

9 "We are past due on these issues and these are
10 production issues: ERP sales special pricing script fails
11 when there is a high amount of data. This appears to have
12 never been tested," close quote.

13 Any question that he said that?

14 A. He said it and it's the responsibility of the customer to
15 test the application, so that's unfortunate.

16 Q. On the Canadian tax -- you know there was an issue about
17 tax on shipping in Canada?

18 A. I did. I brought in a resource specific to solve the
19 issue.

20 Q. Tell the jury what that issue was.

21 A. I don't remember. I mean, there was VAT tax calculation
22 issues, and so I brought in a gentleman by the name of Aihsan
23 Qadir out of Toronto to come in and troubleshoot.

24 Q. His name was what?

25 A. Aihsan Qadir, A-I-H-S-A-N, Q-A-D-I-R. He's one of our top

1 consultants at NetSuite.

2 Q. Do you know a man named Amed Abid?

3 A. I do.

4 Q. Who is he?

5 A. He was -- so you had eCommerce development and you had
6 NetSuite functional ERP delivery, and in between we had
7 eCommerce subject matter experts kind of bridging the gap
8 between ERP functionality and eCommerce.

9 So eCommerce was built on NetSuite but we still had to
10 have functional SMEs, subject matter experts, in between --
11 right? -- in terms of translating functionality as to how the
12 website would work between how we set up the back end and how
13 the front end would show.

14 Q. He says on this Canadian tax on shipping issue, quote
15 (reading):

16 "This wasn't divulged as a noncompliance solution up
17 front." Close quote.

18 Do you have any doubt that he said that?

19 A. I mean, he said it, but I don't understand the context of
20 his e-mail at all.

21 Q. On purchase order quantity validation, Mr. Ganesan said,
22 July 9th, quote (reading):

23 "I came to know today that script will work only for
24 1 percent of the use cases. 99 percent of the time they
25 need to import POs. The script was not designed to work

1 for PO imports," close quote.

2 Does that sound familiar to you? Do you know about that
3 program?

4 **A.** That's unfortunate because Grouse River signed off on the
5 design, so -- but he obviously wrote it.

6 **Q.** Okay. Mr. Ganesan again, a practice manager, quote
7 (reading):

8 "Omni-channel and some other new functionalities are
9 uncharted territories for many companies, including
10 NetSuite. It's going to require quite a bit of
11 experienced resources to coordinate and execute assuming
12 we have a reasonably stable product," close quote.

13 And he said that July 8th, 2015, four months after
14 Go-Live. Okay?

15 **A.** He was very opinionated.

16 **Q.** Huh?

17 **A.** I said he was very opinionated I guess.

18 **Q.** You don't question that he expressed that opinion in
19 internal e-mails?

20 **A.** He must have, yes.

21 **Q.** Quote -- the project manager, July 7th, again several
22 months after Go-Live, quote (reading):

23 "We should never have started configuration because
24 of the sales serial number contractual issues. I was
25 given no choice but to go ahead," close quote.

1 Do you question whether he said that?

2 **A.** He did. Again, out of context.

3 **Q.** Mr. Mason-Jocksch, the project manager, wrote an e-mail
4 just as he was getting off the project in July -- early July,
5 2015.

6 **A.** Which is far longer than our project manager -- I mean --

7 **Q.** What?

8 **A.** Yeah. It's way beyond the tour of duty in terms of -- I
9 mean, we went above and beyond so it's -- I think it's
10 interesting to state that he was still on e-mails July of 2015.

11 **Q.** He says (reading):

12 "Quite frankly, I intend to waste no more of my time
13 on this dead-end project," close quote.

14 **A.** Yeah.

15 **Q.** You know he was referring to Grouse River?

16 **A.** Right. You should probably know why. Can we ask why or
17 do you not care?

18 **Q.** Let me just -- he says, quote (reading):

19 "I was given the poison chalice of Grouse River with
20 its first Canadian omni-channel deal with a third-rate ERP
21 consultancy team with a customer that was promised so much
22 and then left to fight my own battles," close quote.

23 You know he said that too?

24 **A.** Yeah.

25 **Q.** And you know what he also said (reading):

1 "The project was a nightmare from start to finish,"
2 close quote.

3 Right?

4 **A.** Yeah. I mean, he was very emotional.

5 **Q.** Now, you're free to tell the jury, was he -- why did he
6 do -- you wanted to explain why he did it?

7 **A.** I think it's important. I mean, these are e-mails written
8 by the delivery staff. We went above and beyond to make this
9 customer happy --

10 **Q.** I'm --

11 **A.** -- and it took its toll on everybody. I mean, the amount
12 of additional scope and functionality that we had to deliver
13 beyond the original scope of the contract. You know, that's
14 Dave just venting his -- he's very frustrated by that point
15 because there's just -- there's no closure to an endless cycle
16 of delivering functionality that was never purchased.

17 **THE COURT:** Mr. Susman, just so you know, it's about
18 break time so -- for our court reporter.

19 **MR. SUSMAN:** Let me just ask one follow-up question
20 there, and then we can break. I'm sorry, Your Honor.

21 **THE COURT:** No, no, no. I didn't want to interrupt.

22 **BY MR. SUSMAN:**

23 **Q.** I understand he was frustrated and maybe not very happy
24 with the job that he was left, but can you explain to the jury
25 why he would say something that is not true? Why would he say

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1 something that's not true like this project is a disaster, a
2 poison chalice, a dead-end? Why would he say those things?

3 **MS. RAY:** Objection.

4 **THE WITNESS:** You'd have to ask him.

5 **MS. RAY:** He's mischaracterizing his testimony.
6 Mr. Murphy did not say that.

7 **THE COURT:** Overruled. It's cross-examination. He
8 can answer generally.

9 **BY MR. SUSMAN:**

10 **Q.** That's a good question. There were a lot of people that
11 worked on the Grouse River project --

12 **A.** Yeah.

13 **Q.** -- from your company?

14 **A.** Right.

15 **Q.** A lot of people. For example, Mr. Fallis, I think you
16 admitted this is probably the first time you've met him.
17 Mr. Swan, who's going to testify as the first witness in
18 Oracle's case, Mr. Fallis doesn't recall meeting him ever
19 except at maybe a big meeting at a Customer Advisory Board
20 where he just walked in and shook hands and that was it. Okay?

21 I don't know what Mr. Sullivan -- I doubt whether Sullivan
22 has had any meetings with him, but we'll find out when he gets
23 called as a witness.

24 **A.** Who is that?

25 **MR. KIEVE:** Jenkins.

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1 **BY MR. SUSMAN:**

2 **Q.** Jenkins. Mr. Jenkins, Branden Jenkins.

3 **A.** Right.

4 **Q.** But there were dozens of people, project managers,
5 engineers, people on the sales team, Mr. Cole Waldron, who met
6 face to face and dealt with these people on a day-to-day basis.
7 Why didn't they come here to testify on your behalf?

8 **A.** That was not my decision.

9 **Q.** Thank you.

10 **MR. SUSMAN:** We can take a break now, Your Honor.

11 **THE COURT:** Okay. All right. So we'll take a
12 15-minute break.

13 The admonition remains, don't talk about the case. 15
14 minutes.

15 I will just add one thing, which goes to Ms. Ray's last
16 objection. As I've told you a couple of times, what the
17 lawyers say isn't evidence. When people read e-mails, for
18 example, that's the evidence; and when people talk about them,
19 that's just the lawyer's characterization of it. Your own
20 memory -- you'll have the exhibits to look at eventually and
21 your own memory of what witnesses actually say controls.

22 So 15 minutes. See you then.

23 (Recess taken at 10:20 a.m.)

24 (Proceedings resumed at 10:37 a.m.)

25 (Proceedings were heard in the presence of the jury:)

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1 **THE COURT:** The jury is back in the courtroom.

2 Everyone may be seated.

3 And, Mr. Susman, you may restart your examination.

4 **MR. SUSMAN:** Thank you, Your Honor.

5 I would now, Your Honor, like to move the admission of the
6 following exhibits, all of which are the references for the
7 statements.

8 **THE COURT:** Okay.

9 **MR. SUSMAN:** And I do this -- and I'll hand him the
10 documents.

11 Mr. Murphy, I will hand you the e-mails. You will have
12 time at a break or sometime to look at them and tell us -- you
13 had a claim that some were out of context. You're entitled to
14 tell the jury that, but it would be better to have the e-mails
15 before you and before them when you do so.

16 So I move the admission of Exhibit 28, 44, 20, 503 -- let
17 me see -- 22, 226, 25, 31, 45, 27, 247, 220.

18 And that is it.

19 **MS. XI:** 26.

20 **MR. SUSMAN:** And, Your Honor --

21 **THE COURT:** And 26. You were reminded there's another
22 e-mail, 26.

23 Ms. Xi, was that you saying that?

24 **MR. SUSMAN:** 26?

25 **MS. XI:** Yeah.

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1 **MR. SUSMAN:** Okay. I missed 26.

2 **MS. RAY:** Can we repeat the list?

3 **MR. SUSMAN:** Yes. They were on a piece of --

4 Do you have another one of those?

5 **MS. XI:** Yes.

6 **MR. SUSMAN:** Oh, here. You can easily get them off
7 of -- and you have this before you too, what I was reading
8 from, which lists quote, the quote, the person who did the
9 speaking, and the trial exhibit number.

10 And, Counsel, here is a complete list.

11 And, Mr. Murphy --

12 **MS. RAY:** Yeah.

13 **MR. SUSMAN:** -- for you, a complete list.

14 **MS. RAY:** And we're not publishing this to the jury;
15 correct?

16 **THE COURT:** No, no, no. They're admitting the
17 evidence.

18 I think you're offering them into evidence.

19 **MR. SUSMAN:** Yes. Offering them into evidence.

20 **THE COURT:** Yeah.

21 They're the exhibits that support the excerpts that were
22 part of Mr. Susman's questioning. So any objection?

23 **MS. RAY:** So we don't object to moving these into
24 evidence.

25 Again, this list is -- I mean, it helps me figure out what

1 he's doing, because I can't tell. Right? But not published to
2 the jury.

3 **THE COURT:** Okay. Well, they're in evidence. So
4 they're admitted in evidence. They can be used. There may be
5 some redactions or the appropriate part of the exhibits that
6 ultimately get trued-up and put in.

7 Just so the jury knows, sometimes -- e-mail chains
8 especially, sometimes we whittle them down and put in the
9 relevant piece as opposed to all of the piece.

10 But they're admitted.

11 **MS. RAY:** Right. The exhibits themselves as they
12 actually appeared --

13 **THE COURT:** Exactly.

14 **MS. RAY:** Right. Not this.

15 **THE COURT:** Not these. That's a summary. Exactly.
16 We're just talking about the exhibits are admitted. Exactly.

17 The summary was, at best, a demonstrative. It is not
18 meant to be an exhibit. So, yes, you are correct.

19 **MS. RAY:** Okay.

20 **THE COURT:** Okay. So the exhibits are admitted.

21 (Trial Exhibits 20, 22, 25, 26, 27, 28, 31, 44, 45,

22 220, 226, 247, and 503 received in evidence.)

23 **BY MR. SUSMAN:**

24 **Q.** Okay. Mr. Ryan, I would now like you to look at what you
25 have before you, sir. We're going on --

1 **A.** Um-hmm.

2 **Q.** -- to Exhibit 143.

3 You see Exhibit 143 there?

4 **A.** Is it in this stack right here?

5 Sorry. Is it in this stack right here?

6 **Q.** Yes. It should be close to the top. It's --

7 **A.** Oh, right, right.

8 **Q.** You got it?

9 **A.** Yeah.

10 **Q.** Could we have -- this is Exhibit 143. Could we have that
11 put up on the screen so the jury sees what it is.

12 This is a slide show or PowerPoint presentation that was
13 presented by Mr. David Mason-Jocksch May 13th.

14 To put this in context, the contract -- let's just see if
15 we can do it. Contracts are signed on March 30; right?

16 **A.** There around, yes.

17 **Q.** Right. And you signed -- as I recall, you signed the
18 statement of work that's attached to the contract.

19 **A.** Right.

20 **Q.** And the contract itself, the -- what's it called? A
21 subscription, SSA?

22 **A.** Well, there's two contracts. I mean, you have the SSA,
23 which is the subscription services agreement, which is the
24 overall terms and conditions of licensing and services. And
25 then you have the statement of work which outlines what is

1 going to be delivered functionally speaking.

2 Q. Okay. And so this is -- as soon as the contract's signed,
3 you recall you write a letter e-mail to Mr. Fallis saying,
4 "Congratulations. Look forward to working with you. I'm going
5 to assign so-and-so the project manager. Here's the team."

6 Right?

7 A. Right.

8 Q. And there's a list of things that are to be done, a
9 timetable. It's in your e-mail.

10 And the first thing, as I recall, is the kickoff meeting,
11 which happened on May 13th; right?

12 A. Um-hmm.

13 Q. It was within 45 days of the signing of the contract.

14 A. Right.

15 Q. Okay? And if we will look at this document, look at
16 page 5, here is the various people that have responsibility on
17 NetSuite's side.

18 Ryan Murphy, you're the program advisor; right?

19 And then we have all these --

20 (Reporter interrupts for clarification of the record.)

21 **THE WITNESS:** I didn't answer.

22 **THE COURT:** He didn't answer. Yeah, Mr. Susman is
23 still in the middle of his question. There wasn't an answer.

24 **THE WITNESS:** The page numbers don't align; so I'm
25 just trying to find --

1 **BY MR. SUSMAN:**

2 **Q.** I'm sorry. Oh, the pages I'm looking at --

3 **A.** I found it.

4 **Q.** -- are the ones at the bottom of the page that we put on,
5 or that the lawyers put on, called "page 5 of 57."

6 **A.** It's not lining up. That's -- don't worry about it.

7 **Q.** H'm?

8 **A.** You're showing the black-and-white version. This is the
9 color version. So it's fine. The pages don't align, but it's
10 fine.

11 **Q.** All right. Okay.

12 **A.** Doesn't matter.

13 **Q.** Let's look at the color version. I mean, the version
14 you're looking at.

15 Those are the names of some of the people we've been
16 talking about. Mr. Mason-Jocksch, Melissa, Karen Messick. All
17 those people are down there.

18 We talked about Mr. Abid; right?

19 **A.** Um-hmm.

20 (Reporter interrupts for clarification of the record.)

21 **THE WITNESS:** Yes.

22 **BY MR. SUSMAN:**

23 **Q.** In any event, then I want you to look over on page -- on
24 my version, it's page 1257. But I don't know what it's going
25 to -- project management process, yes. Whatever is on the

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1 screen is what I wanted to ask you about.

2 You said there's going to be a weekly status report
3 distributed to the team. You mean in writing?

4 **A.** Yes. That was the process, yeah.

5 **Q.** And do you keep those weekly status reports?

6 **A.** Yeah. So that would have been the responsibility of
7 Dave Mason to write those up and then publish that to the
8 internal and external teams.

9 **Q.** Can you give us any explanation of why the weekly status
10 reports -- they are available now; right? They should have
11 been produced in this case; right? Have you seen them in
12 preparing for your testimony?

13 **A.** I mean, I've seen them multiple times, both during the
14 project as well as I've seen them as an exhibit, yes.

15 **Q.** You've seen a weekly status report as an exhibit?

16 **A.** Um-hmm.

17 **Q.** What is it? A separate --

18 **A.** Yes.

19 **Q.** -- document, or is it part of one document?

20 **A.** It's a -- so it's a consolidated Word document that takes
21 each week, and the status, as it applies to ERP, point-of-sale,
22 and SuiteCommerce Advanced.

23 **Q.** Let's look at Exhibit 213. Do you see that?

24 **A.** Yes.

25 **Q.** Is that the weekly status report?

1 **A.** That is it, yes.

2 **Q.** Is that what you're referring to?

3 **A.** Yes.

4 **Q.** Okay. Good. We'll come back to that. I did not know
5 what it was -- I did not understand what it was.

6 **A.** Yeah, that is -- so Dave just -- I mean, it's just a --
7 it's just a running Word document that keeps track of the
8 weekly statuses for the project.

9 **Q.** And this is shared with Grouse River?

10 **A.** Yeah. Yes.

11 **Q.** They get this document?

12 **A.** Yes.

13 **Q.** Okay. Weekly status report. Then there will be a
14 biweekly steering committee meeting?

15 **A.** Right.

16 **Q.** You were on the steering committee meeting?

17 **A.** Yes.

18 **Q.** But you appear very rarely as attending a steering
19 committee meeting. You didn't attend a biweekly steering
20 committee, did you?

21 **A.** My recollection is that I did. I haven't seen anything to
22 say otherwise.

23 **Q.** Well, if you did, your name would be shown in this
24 document; right? The status report.

25 **A.** Which page are you referring to?

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1 Q. Well, let's put it up. Let's put up, so the jury can keep
2 up with us, 213. Can you blow up the top of the page.

3 All these people listed at one time or another were
4 Grouse -- were NetSuite employees who worked on the
5 implementation phase of the project; correct?

6 A. Yes.

7 Q. And so if you'll go down -- what is -- by your name is
8 something called "PD." What does that mean?

9 A. Practice director.

10 Q. Practice director. Thank you, sir.

11 All right. Steering committee members are Cole Waldron,
12 yourself, Gary Specter, and Elliot Slivoskey; right?

13 A. Right. That's what it says, yes.

14 Q. Okay. And this is an internal steering committee?

15 A. No. This would have been external with Grouse River.

16 Q. With Grouse River?

17 A. Um-hmm. So it's a governance call. You bring in the key
18 stakeholders --

19 Q. Okay.

20 A. -- and you meet.

21 Q. Then let's go to -- now, this document, just so we're sure
22 what this is, it's a 33-page document, and it begins on page --
23 let's go to the final page, page 33.

24 All right. Now, there are the names of your -- the
25 NetSuite participants at the bottom.

1 Could you go to the prior page. This is like an e-mail.
2 We're going to have to read it backwards. Next page.

3 Prior page. Okay. And blow up the bottom of the page
4 beginning with "Steering Committee Meeting."

5 Okay. And is this a meeting you attended, or do you know?

6 **A.** Dave did not put in the notes here who attended this
7 meeting.

8 **Q.** Okay. But that meeting, which was the first meeting of
9 the steering committee on June 27, covers a lot. There's a
10 pretty detailed record there; right?

11 **A.** Yeah. I mean, it's very comprehensive. This would
12 have -- it looks like this is the steering committee that
13 happened after we went on-site to do the business requirements
14 definition.

15 **MS. RAY:** I believe the attendees are on the next
16 page.

17 **THE WITNESS:** I don't think those are the attendees.

18 **MR. SUSMAN:** Can we have the prior page. I mean, the
19 next page. You're going the wrong way. Ken, you've got to go
20 backwards.

21 All right. Let's see. Where it says "Steering Committee
22 Meeting," could you blow that up.

23 And that is -- did I miss the name, Ms. Ray?

24 **MS. RAY:** I think we looked at a different page.

25 \\\

1 **BY MR. SUSMAN:**

2 **Q.** I'm sorry. I don't see the steering committee members
3 listed who attended this meeting.

4 **A.** Yeah. I mean, I've read through it, and looking at this
5 document just now, Dave did not identify who was present or not
6 present at these meetings. It's merely a status.

7 **Q.** Okay. And so you don't remember which of these meetings
8 you attended?

9 **A.** I mean, I would have attended as many as I could make. I
10 can't sit here and tell you which ones I attended, you know,
11 five years ago. But I was an executive sponsor, as it applied
12 to NetSuite, and project sponsor. So I would have attended the
13 steering committees as they were scheduled.

14 **Q.** So look at page 30. And if you look near the top -- blow
15 up the top part, please. And you see that your pointer is
16 right where "Ryan explained."

17 Do you see that paragraph right there? (reading)

18 "Kevin was concerned on what was now missing or taken
19 out of the plan to achieve the date. We understand that
20 Glenn expects no loss of functionality, and that is what
21 NetSuite wants to achieve too. Ryan explained that
22 nothing had been omitted from the original requirement.
23 However, he did mention that geotracking will not make
24 Phase 1."

25 Do you recall saying that?

1 **A.** I do not, no. I mean, I do remember that -- just to put
2 it out there -- I mean, Grouse River wanted to Go-Live before
3 their busy season, which was October 2014. And in order to hit
4 such an aggressive Go-Live date, there would have had to have
5 been functionality that couldn't make the first release in
6 order to Go-Live.

7 So the context behind that is, you know, I know that we
8 had discussions with Glenn and team, in terms of what would be
9 included in the first Go-Live, and geotracking was obviously
10 omitted.

11 **Q.** Let's go back to -- I'll go back to the PowerPoint
12 presentation that we were looking at a little while ago. And
13 would you look at page 12 of 57.

14 **A.** You're going to have to show it because, again, the pages
15 aren't aligning.

16 **Q.** I'm sorry. You see "Project Management Process"?

17 **A.** Yep.

18 **Q.** Okay. At the bottom, there's a statement that says
19 (reading):

20 "Any requirements identified during the
21 implementation that fall outside the original SOW or is
22 not supported by the NetSuite out-of-the-box
23 functionality" --

24 Is that another word for "native"?

25 **A.** I don't like the term "native." So I can't agree with

1 that, no.

2 Q. What's the difference between "native" and "out-of-the-box
3 functionality"?

4 A. Out-of-the-box functionality means that there is a core
5 set of functionality that works without any additional
6 customization.

7 Q. What does "native" mean? Or you don't know?

8 A. I don't like the term. So I don't know.

9 Q. Really? You don't know what "native" means?

10 A. I know as it applies to --

11 Q. I'll accept that.

12 A. -- geography, sure.

13 I mean, frankly, to be frank, I do not -- I mean, native
14 functionality, I just don't use it as it applies to NetSuite.

15 Q. Okay. Now, let's talk a little about what the business
16 review document does. Okay?

17 A. Um-hmm.

18 Q. Whatever statements were made about the features and
19 functions of the system that Mr. Fallis may have relied on in
20 entering the contract -- okay? -- if they aren't really
21 included -- okay? -- there's an opportunity, after he's already
22 entered the contract and paid the money, for your group --
23 because that was the sales group that does that. Then your
24 group comes in and implements; right?

25 A. No. So if you remember, there was a detailed scoping

1 process during the sales cycle where we had a two-plus-hour
2 call with Glenn, you know, to go through "Are you going to use
3 X? Are you going to use Y?" And that's functional specific.

4 Can I educate the jury for a minute on functionality that
5 we deliver versus what's licensed?

6 **Q.** Absolutely.

7 **A.** Awesome.

8 So NetSuite, within its core product, includes certain
9 features, such as your purchasing process, your sales process,
10 your inventory process; right?

11 But then there's advanced features. So NetSuite is a
12 licensing-based application. Right? So if I need advanced --
13 what's a good -- like advanced financials. So, like, doing,
14 you know, financial allocations or amortizations or stuff --
15 you know, advanced accounting, that would be an additional
16 module that the customer would have to purchase.

17 So when we do the statement of work, it assumes that we
18 have already aligned the sales on what advanced modules --
19 outside of the core box -- right? -- what's included, what
20 additional modules that they may purchase. And we would align
21 that to, is NetSuite going to configure that and help work with
22 the customer to set that up, or are they not?

23 So when we go through the scoping process, we're aligned
24 to what functionality they're going to use and how is NetSuite
25 going to deliver it. And that's how the statement of work is

1 crafted.

2 So when a customer signs, they're basically saying, okay.
3 If it's in scope, this is how the NetSuite consultants -- this
4 is the functionality that the NetSuite consultants are going to
5 work with the customer on to set up, which may include
6 additional license functionalities, such as advanced
7 financials, which I just covered.

8 So that's the architecture. Like, you have your
9 licensing, and you have your delivery services. And a customer
10 can choose to opt out. Right? They could purchase advanced
11 financials, but then they could say: Listen, we have expertise
12 in this area in NetSuite. We're going to do it on our own. We
13 don't need your help.

14 Fine. So we make that out of scope within the contract.
15 It may be in scope in the licensing. They may have purchased
16 that module. But it may be out of scope in the contract
17 because we're not actually spending hours or level of effort to
18 set that functionality up.

19 It's a very important thing to understand.

20 **Q.** Okay.

21 **A.** So what is -- and the statement of work is what the
22 customer has agreed to.

23 **Q.** Let me ask you this question, then. A document is
24 prepared. In this case, it was signed sometime in September by
25 Mr. Fallis, and I think it was -- who else signed it? Did you

1 sign the --

2 A. So we're talking about which document?

3 Q. The business requirements document.

4 A. Right.

5 Q. You signed that?

6 A. I did not. That was actually countersigned by Dave Mason.

7 Q. The project manager signs it. That is a contractual
8 document; right?

9 A. I've so learned.

10 Q. H'm?

11 A. Yes.

12 Q. So we have a contract on March 30th, and then we have
13 another contract in September --

14 A. Um-hmm.

15 Q. -- called a business requirements document.

16 A. Um-hmm.

17 Q. Actually, there were a lot of other contracts -- right? --
18 further on? There were change orders, which is a contract.
19 There were different statements of work; correct?

20 A. I think we're generalizing here, but sure, I can assume
21 that there were additional contracts.

22 Q. That Mr. Fallis had to sign. You know that. You asked
23 him to sign things.

24 A. I'm not sure he had to pay for them, but he signed them.

25 Q. What?

1 **A.** I say he didn't pay for them, but he signed them.

2 **Q.** And he signed them, you know, because you took the
3 position that unless he signed them, you weren't going to fix
4 things; right?

5 **A.** Being that we're a public company, we had to follow
6 protocol that a customer has to sign a contract for us to
7 deliver it.

8 **Q.** Right.

9 **A.** I should hope so.

10 **Q.** And you are aware when he signed that contract, those
11 subsequent contracts, he did so in reliance on someone from
12 NetSuite saying, "We can fix the problem. Just sign here"?

13 **A.** Those change orders were not fixing a problem. They were
14 requesting additional functionality that was way beyond the
15 scope of what was agreed to.

16 **Q.** Whatever it was, you weren't going to do it unless he
17 signed?

18 **A.** We could not because we're a publicly traded company.

19 **Q.** And you knew his position because he made it very clear
20 when Mr. Ganesan asked him, Suba, to sign a statement of work
21 in the summer of 2015 --

22 **A.** Um-hmm.

23 **Q.** -- that he was doing it because NetSuite needed it for its
24 internal purposes?

25 **A.** Right. Because we were giving him all the work for free

1 to make an investment to make sure he was successful.

2 **Q.** And you know he notified Mr. Ganesan that he was doing --
3 he was reserving his right to complain about other problems.

4 And Mr. Ganesan said, "Fine, reserve your right, but sign
5 here."

6 You're aware of that, aren't you?

7 **A.** There was a formal process that was being followed that
8 had to do with -- I mean, the CFO was involved at that time.
9 Like, I don't know how many C-level executives have to be
10 involved to help this customer out. But this had to be
11 approved at the CFO level to give away tens of thousands of
12 dollars for free work. And so all we required was Glenn's
13 signature for us to move forward. So we were following
14 standard procedures and following accounting practices and
15 rules so we didn't violate the law.

16 **Q.** Let me ask you to look at -- I'm not going to ask you to
17 look at it. Let me ask you whether in August of 2015, you told
18 Mr. Fallis in writing, quote (reading):

19 "I know this probably doesn't make sense, but we need
20 the estimate signed, which is free to you as we are
21 processing a credit internally via our finance team, to
22 allow us to work and fix your issues. If an estimate and
23 SOW, statement of work, are not signed, we cannot continue
24 to work. It's that simple."

25 You recall writing that e-mail, don't you?

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1 **A.** Of course. I didn't want to break the law.

2 **Q.** And do you recall earlier that when Mr. Ganesan asked
3 Mr. Fallis to sign a statement of work, Mr. Fallis wrote him an
4 e-mail and said, "I'll do this on condition that you are still
5 agreeable to fix whatever is wrong. This is not a release or
6 waiver"?

7 And Mr. Ganesan responded, "I agree," in writing?

8 Do you know that?

9 **A.** So clarify that again.

10 **Q.** There's been a contingent made in this lawsuit by
11 NetSuite, or Oracle, that every time Glenn Fallis signed
12 another contractual document to make his system work -- well,
13 let me start again.

14 First, there's a contingent they make in this lawsuit that
15 he didn't use reasonable efforts to mitigate his damages, to
16 avoid his damages.

17 You understand what I'm saying; right?

18 **A.** Fully, yes.

19 **Q.** Wasn't he trying every way in the world to get you to fix
20 the problems he perceived, the gaps?

21 **A.** That statement is not accurate.

22 **Q.** What?

23 **A.** These additional contracts were not to fix gaps. A lot of
24 them had to do with developing additional functionality.

25 **Q.** Why were you willing to do it for free?

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1 **A.** Why do we do it for free? Because we're making an
2 investment to make sure this customer is happy.

3 **Q.** You were just giving away thousands of dollars of services
4 for free, for stuff he was not entitled to contractually,
5 because --

6 **A.** He was entitled to it contractually. We had him sign --
7 so there's a customer adjustment request process which -- so
8 basically what happens is that if it -- whatever the work is --
9 right? It could be, you know, additional consulting services.
10 It could be developing -- you know, building new features, what
11 have you.

12 If somehow NetSuite deems that we're going to give that to
13 them, by no means is that a concession. You know, in this
14 situation, it was an investment. And there's a formal process
15 that went, in this case, all the way up to the CFO because at
16 this point we had given away tens of thousands -- hundreds of
17 thousands of dollars worth of free services. And there was a
18 formal process of having Glenn sign those contracts.

19 So by no means was NetSuite impeding the process. These
20 contracts were not just to fix issues. They were to develop --
21 it was a continuous cycle of continuing to develop additional
22 functionality as well.

23 So, no, by no means do I agree that these contracts were
24 created to fix gaps.

25 **Q.** Okay. Would you at least concede that when you did the

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1 work for free, when a publicly held company gives away services
2 worth thousands of dollars for free, the customer at least has
3 a fair argument that "I contracted to get that" or "It was
4 represented that I would get that"? Is that fair? Can we
5 agree on that much?

6 And that's why it was in a gray area. Okay?

7 **A.** Sure. He didn't pay for it, but he was signing a contract
8 to have those services rendered, of course.

9 **Q.** But what's clear is you weren't going to do anything, even
10 for free, unless he signed another contract?

11 **A.** That's right. I was not willing to violate the law.

12 So what I'm referring to is committing a side letter. So
13 if we had given away services without Glenn signing contracts,
14 the SEC -- which, you know, we've been educated today on what a
15 10-K is -- the SEC would launch a formal investigation to the
16 point where they would actually freeze NetSuite's stock on the
17 stock exchange.

18 So what they're asking me today is if I would proceed with
19 work without having a signed contract at the risk of having the
20 NetSuite stock frozen on the stock exchange.

21 **Q.** Okay. But what I'm asking you is: When he signed these
22 additional contracts, did you really think he was giving up his
23 right to complain about anything else?

24 **A.** No. Glenn always sent his thoughts and feelings --

25 **Q.** Thank you.

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1 **A.** -- regard- -- I mean, it had nothing to do with whether he
2 signed a contract.

3 **Q.** Now, let me go back to Exhibit -- the initial PowerPoint
4 presentation, which is May 13th. Please show page 27.

5 This is the timetable. Project kickoff meeting. You did
6 not attend; right? You weren't at the May 13th meeting?

7 **A.** I was, yes.

8 **Q.** Huh?

9 **A.** I was, yes.

10 **Q.** Are you sure you were there?

11 **A.** I'm sure.

12 **Q.** Because you wrote an e-mail thereafter apologizing for
13 missing it.

14 **A.** Okay. And that -- so my recollection is I was there. So
15 I would --

16 **Q.** In-person? You weren't there in person. Over the phone?

17 **A.** Yeah.

18 **Q.** And this was not an on-site meeting?

19 **A.** No. It was delivered remotely.

20 So my recollection is I was on the call. If there's
21 evidence to prove otherwise, then I will see it; but I mean, my
22 recollection is I was on this call.

23 **Q.** Okay. Now, let me go back to -- we were talking about
24 and I forgot -- it's so interest- -- I'm sorry. I forgot my
25 train of thought because we got off on something.

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1 But I think I was talking about the business requirements
2 document, which is another contract. I mean, and so -- what I
3 was trying to establish is, Mr. Fallis was signing agreements
4 up to the very end. He signed one in 2017. You recall that?

5 **A.** What was that again? In 2017?

6 **Q.** Yes.

7 **A.** I don't recall.

8 **Q.** Just to continue the subscription --

9 **A.** Oh, sure.

10 **Q.** -- which he didn't pay for, but it was a contract.

11 **A.** He didn't pay for the subscription?

12 **Q.** I don't know whether he did or not. I thought you said he
13 didn't pay.

14 **A.** I'm talking about services. There's a difference between
15 paying for subscription and paying for services.

16 **Q.** Yeah. Well, whatever, there was this continuous signing
17 of contracts to the very end; right?

18 **A.** That's true.

19 **Q.** Okay. Now, the business requirements document, the
20 function is -- one of the functions is to identify gaps; right?

21 **A.** Yes. Yep.

22 **Q.** Product gaps?

23 **A.** No.

24 **Q.** Well, process gaps too?

25 **A.** Yes.

1 Q. I mean, there are different kinds of gaps?

2 A. That's right.

3 Q. And the one, in this case, identified --

4 Do we have that business requirements document, Exhibit 7?

5 Let's put it up.

6 A. I don't think I have a copy of that.

7 Q. Well, let's go to the last -- go towards the end. Again,
8 going back from there. Keep going, Ken. Just keep going
9 backwards. Keep going. Keep going. Keep going. Keep going.
10 Keep going. Whoa. Whoa. Stop there.

11 Aah, 17. On page 99 of a 110-page document, the finale.
12 Let's read the top. (reading)

13 "This section identifies all gaps uncovered in the
14 business process mapping phase of the implementation.
15 Each gap has been categorized as follows."

16 There are product gaps, which are gaps that cannot be --
17 issues that cannot be accommodated using standard NetSuite
18 functionality. Process gaps require workaround processes to be
19 used as part of the solution. Scripted solution, and then
20 scope.

21 Okay. And the following table elaborates on the unique
22 business requirement, the solutions/work-arounds, et cetera,
23 et cetera.

24 Now, scroll up the page.

25 Product Gap Number 2.1.1, serialized items cannot be sold

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1 through POS. As Grouse River requires that items containing
2 serial numbers -- not just guns or firearms -- items containing
3 serial numbers on the product be tracked, an alternative method
4 is required for tracking these items.

5 And then you list a proposed solution.

6 Can we go to the next page, please. The next page. No,
7 I'm on page 100 now. And could I have the top of the page
8 blown up.

9 And there's the proposed solutions for that gap that was
10 identified; right?

11 **A.** That's what the consultants wrote at that time, yes.

12 **Q.** So it's a gap -- the consultants who did this, it's a gap
13 because we now know that whoever's fault it was, the customer
14 expected, when he bought this, for it to be able to do
15 something, handle serialized products. We know it won't do
16 that. The implementation team says it can't do it without some
17 modification.

18 And the decisions are blank here.

19 **A.** I'm definitely not agreeing to your statements.

20 **Q.** What?

21 **A.** I'm not agreeing to what you just said by any means.

22 **Q.** The decision is blank. Okay? No decision is made what
23 we're going to do here.

24 But let me ask you about the decision. The customer -- in
25 this case, Grouse River -- has some options. They can either

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1 agree. Okay?

2 **MS. RAY:** Is Mr. Susman going to testify, or is he
3 going to ask a question?

4 **THE COURT:** Do you have an objection?

5 **MS. RAY:** I object that he's not asking a question; he
6 is testifying.

7 **THE COURT:** I'll overrule the objection.

8 At some point, you'll have to ask a direct question.

9 **MR. SUSMAN:** I was trying to get there.

10 **THE COURT:** Yeah, I know you are.

11 **BY MR. SUSMAN:**

12 **Q.** The customer could say, couldn't he, or it -- couldn't it
13 say, "I didn't know about that gap before. I'm out of here.
14 Give me my money back. I wrote you a check for \$330,000. I
15 want it back because it can't do this"?

16 That would be one possibility; right?

17 **A.** I guess at the extreme, yes, a customer could do that.

18 **Q.** It'd be really extreme?

19 **A.** A customer could do that.

20 **Q.** It'd be extreme and probably unreasonable for them to do
21 that; right?

22 **A.** Well, it wouldn't make sense because within the terms and
23 conditions, they would lose all their money. So --

24 **Q.** The other possibility can be, "Okay. You say you can fix
25 it. I like your solution. Go right ahead."

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1 And they sign this. I don't know whether it means they
2 agreed with your solution, but that was a solution that was
3 promised.

4 So this would work; right?

5 **A.** Within the BRD context of BRD, this is a recommendation.

6 **Q.** Okay. Let's go down and look at the other product gaps.
7 The next product gap, right there.

8 We did that. The next one. Next page.

9 There's a product gap, 2.1.2. Blow it up.

10 Aah, this is even a further product gap on serialized
11 firearms. Now we're talking about firearms. And it talks
12 about the gap and the solution.

13 Keep going down. I want to show every gap that's been
14 identified, product gaps. Continue down, Ken.

15 Oh, here's another gap. Two more gaps.

16 Ken, you're going too fast. Back it up again.

17 There. This is -- no. Is that -- keep going up further.
18 Have I missed one?

19 All right. We got that. Let's go to the next gap,
20 product gap. Keep going till you get a product gap, Ken.

21 There, there's a product gap.

22 "Grouse River." Do you see that product gap? There's a
23 product gap. And a third-party configure.

24 Next. Keep going to the next one. There's a product gap.
25 "Shipping Cutoff Indicator."

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1 Next, "Product Shipping Restrictions" gap.

2 Another product gap, 8.3.2, "Component Dependent Alert
3 Messages."

4 I'm not going to go through these all, but the point is,
5 now this has given NetSuite a second look at what Grouse
6 River's requirements are. They looked at it before they
7 entered the contract. Now, at the business development,
8 they're looking at it again; correct?

9 **A.** No, that's not --

10 **Q.** A second look.

11 **A.** That's not accurate.

12 **Q.** Isn't it true that if there were a gap between what
13 NetSuite's solution would do and what the customer thought it
14 would do, it should be pointed out in this document?

15 You had another chance in this document to tell
16 Mr. Fallis: Look, I know you were expecting to be able to -- a
17 customer could order online and pick up the product in the
18 store, but I'm sorry; we can't deliver that. Or you say you
19 were expecting gift cards. We don't have that.

20 It would be another opportunity, call it a product gap,
21 and get him to sign and say, "That's okay. Go ahead." Right?

22 **A.** No. I mean --

23 **Q.** Okay.

24 **A.** -- you're generalizing into a lot of statements.

25 By no means did we get to this level of requirements

1 during the sales cycle.

2 Q. Okay.

3 A. Which Grouse River knew what the process was. So if these
4 features were important to them, they should have communicated
5 that to us in the sales cycle, and accurately, to that point.

6 Q. All right. Let's look again at Exhibit Number 213. And I
7 would like you to look at page 14. This is this log.

8 By the way, I think I heard you -- I tried to go through
9 this and see every time your name was mentioned. It doesn't
10 seem to be mentioned.

11 You said there was a period of time where you were pulled
12 off the project?

13 A. Right. So we put -- so Subu and Nan Roecker took over
14 executive sponsorship while I was away.

15 Q. And what period was that again?

16 A. So that would have been about early to mid-October through
17 April 2015. So October/November 2014 through April 2015.

18 Q. And who was in charge of the project?

19 A. So Nan Roecker and Subu Ganesan, or "Ganesan."

20 Q. All right. Look at page 14. And in the middle of the
21 page, there's something called "Inventory Replenishment Issue."
22 It comes up, this is on December 11th, 2014.

23 Maciek, Kevin, and Glenn, the scenario -- they are there.
24 The scenario they are trying to fulfill with inventory
25 purchased into a distribution center, if required, and

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1 transferred to other locations, if required.

2 Paul, that's Paul Clark; right?

3 **A.** Right.

4 **Q.** He was a consultant on this project?

5 **A.** He was, yes.

6 **Q.** And Aihsan, he was a guy you brought in to deal with some
7 of these issues; right?

8 **A.** Aihsan, yes.

9 **Q.** Aihsan?

10 **A.** Um-hmm.

11 **Q.** (reading)

12 "Paul confirmed Aihsan's claim that NetSuite as
13 standard, out of the box, doesn't work this way. It is
14 intended to purchase inventory to each location."

15 So, reactions. (reading)

16 "Review replenishment inventory screen as
17 demonstrated by Paul. Find a similar NetSuite customer
18 that GRO, where they operate with a distribution center,
19 so that GRO can discuss with them their ways of working.
20 Charlie to find such a customer and put them in touch with
21 GRO team."

22 Was that ever done, or do you know?

23 **A.** I don't know. I don't understand the relevance of this
24 example.

25 **Q.** Excuse me?

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1 **A.** I don't understand the relevance of this example, what
2 we're trying to achieve.

3 **Q.** Look at page 12, please. This now goes up into January of
4 2006 at the top of the page.

5 So let me -- really, you weren't involved at this time.
6 This is an unfair question for me to be asking you. I did not
7 know you were gone for so long.

8 You were not involved here; right?

9 **A.** I was in the heart of L.A. at that time, correct.

10 **Q.** Okay. Fine. And I'm not going to ask you these
11 questions.

12 But isn't there anyone at NetSuite who was involved at
13 this time that could come here and explain to the jury what
14 this means? Anyone?

15 **A.** I mean, you took the deposition of the individuals on this
16 document. You tell me.

17 **Q.** Okay.

18 **A.** I mean, I was the executive sponsor. I was part of the
19 project, you know, for a good part of it. We had Satish and
20 Subu and Nan Roecker, who were highly involved in this project.
21 We had Dave Mason, who was an advocate for the customer and
22 deeply involved all the time.

23 This is by far the most detailed status report I've ever
24 seen on any project. So, I mean, I'm your witness.

25 **Q.** Yeah. Okay.

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1 **A.** Where are your people?

2 **Q.** My client's been out of business for a long time. I think
3 your employer is still in business. Aren't they?

4 **A.** They are.

5 **Q.** This, at the top, says (reading):

6 "Sales and credit memo processing is still causing ERP
7 processing errors right at the end."

8 "Gift certificates" in the middle. (reading)

9 "Paul/Kevin have spoken but no resolution. There's
10 no link connection between POS and SCA gift certificates."
11 Does that mean they aren't integrated insofar as gift
12 certificates are concerned?

13 **A.** Is that a question?

14 **Q.** Yes, sir.

15 **A.** These are standard notes of what a team is going through
16 to implement a customer. I mean, NetSuite -- I mean, ERP
17 application is a highly complex application as it pertains to
18 setting it up. And these are complex projects. So, one, my
19 hat's off to David to even make these type of project notes. I
20 mean, it's just -- it's amazing.

21 And secondly, I think these notes are indicative that the
22 team is actively working on a weekly basis to get these
23 features to work.

24 **Q.** Okay. But whatever David put in here is supposed to be
25 accurate. And if the jury gets it and looks at it, they ought

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1 to be able to accurately see what's going on day by day on this
2 project; right?

3 **A.** It appears so, yes.

4 **Q.** Thank you.

5 Now, look at -- that was already talked about.

6 Okay. Look at 496, Exhibit 496, which begins with an
7 e-mail. It's the last page of 496. Do you see it?

8 **A.** Yes.

9 **Q.** It begins with an e-mail dated 8 -- August 5th, '14, from
10 you to a person named -- pronounce it, please.

11 **A.** I think it's Kalyan.

12 **Q.** Kalyan?

13 **A.** Yeah.

14 **Q.** Chatum?

15 **A.** Yes.

16 **Q.** You told Mr. Chatum -- it's a mister, I assume.

17 **A.** Yes. Correct.

18 **Q.** Okay. You told Mr. Chatum you were getting, quote, a
19 really bad feeling the SCA team was waiting between June 20th
20 and July 29th, and asked him to fill in the gaps because you
21 wanted -- you planned to have a conversation with Grouse River
22 prior to presenting a revised timeline.

23 You see that?

24 **A.** I do, yes.

25 **Q.** The original SuiteCommerce Advanced manager on the

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1 Grouse River project was Paula Villa; right?

2 **A.** Right.

3 **Q.** And she was replaced on May 20th by David Mason-Jocksch,
4 who reported to you; right? I mean, she basically attended one
5 meeting and --

6 **A.** Who are we referring to again?

7 **Q.** Paula Villa.

8 **A.** Okay. So that's for e-commerce. I don't think David
9 replaced her as an e-commerce.

10 **Q.** Okay. In any event, Kalyan didn't replace David Mason on
11 June 27th?

12 **A.** Okay. So, yeah. So --

13 **Q.** What you -- I mean, he's --

14 **A.** He took over -- I mean, he took over as the central
15 program manager. Sure, that's fair. It was right when the
16 project kicked off. I mean, it took so long for the project to
17 actually get going because we were waiting on Grouse River. So
18 it doesn't surprise me that Dave ends up assuming the role
19 because Paula got reassigned because we were waiting so long
20 for them to assign their PM at Grouse River.

21 **Q.** Excuse me?

22 **A.** So there was a waiting period between when the statement
23 of work was signed and when we started the project, and that
24 had to do with Grouse River having to go and find a project
25 manager and NetSuite administrator. And so we were actually

1 waiting around for them to fill this role before we could start
2 the project.

3 Q. The project manager, a Mr. Ryan -- you know who I'm
4 talking about? Kevin Rost?

5 A. Kevin Rost, yeah.

6 Q. Rost?

7 A. Yeah.

8 Q. He was on board in time for the kickoff meeting on
9 May 13th, wasn't he?

10 A. Right, but the SOW was signed at the end of March.

11 Q. Okay. And these other things -- these changes that are
12 being talked about in this e-mail all took place after the
13 kickoff meeting. We had him on board. We had a kickoff
14 meeting.

15 And you're worried about what was going on between
16 June 20th and July 29th because you say, "I have a bad feeling
17 that this is our problem, not Grouse River's problem." Right?

18 A. No doubt. And I wrote that. And as a good manager, I
19 should be writing e-mails like that, as an executive sponsor,
20 like, what are we doing?

21 (Reporter interrupts for clarification of the record.)

22 **THE WITNESS:** I'm sorry. I spoke too fast.

23 As an executive sponsor, I was doing my job. And I do see
24 my job as writing an e-mail such as this to say, "Have we been
25 working?"

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1 And the answer is "yes" because Kalyan then filled in the
2 details. So this is an in-mine e-mail. So what you're not
3 seeing is that there are comments put in by the e-commerce team
4 as to what they were doing, with dates. So they actually
5 substantiated that we were working in that period, which is
6 fantastic.

7 Q. Yeah. I see all the dates there, and the jury can see
8 them. Those are those -- see those little stars there? That
9 was what was added to the e-mail. You asked "Fill in the
10 blanks"; right?

11 A. Right.

12 Q. And then someone did. And all these changes take place
13 after the kickoff meeting; right?

14 A. The only change I see is that Dave Mason took over for
15 Paula as the -- what appears to be the central program manager
16 for the project.

17 Q. Kalyan writes you that the original project date was based
18 upon there not being any customizations. You see that?

19 A. So --

20 Q. Do you see that?

21 A. I do see that, yes.

22 Q. And doesn't he explain that there were so many gaps in the
23 requirements that it was doubtful that Grouse River would agree
24 to a BRD and that the project would be delayed and the timeline
25 would have to be extended? He writes that, doesn't he?

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1 **A.** He did write it, yes.

2 **Q.** He says that when he and Mr. Mason-Jocksch told
3 Grouse River about the delay, they learned for the first time
4 of the importance of an October 6 Go-Live date. You understand
5 that -- right? -- that they had communicated an October 6
6 Go-Live date to Grouse River?

7 **A.** I knew that that -- no, it was not committed to by any
8 means. Sorry. It was in this -- it was in the kickoff deck,
9 and it was a projected Go-Live date, as established by Grouse
10 River; but by no means did NetSuite commit to that date or
11 guarantee it, for that matter.

12 **Q.** Would you look, please, at Exhibit 204. Exhibit 204 is an
13 e-mail exchange you had with Mr. Mason-Jocksch in late
14 July 2014 where he tells you, on the top of page 2, please --

15 **A.** Give me one moment. I'm trying to get there.

16 A binder would have been super helpful.

17 Okay. All right. I'm there.

18 **Q.** It says:

19 "Ryan, I wish I'd have known that two or three months
20 ago, before I started the GRO" -- Grouse River --

21 "project, as I have that exact same example now. We have
22 a few 'out of scope' items that need scoping from
23 technical services that certainly has 'burnt hours' during
24 this BRD creation. I've also had red flags (that you've
25 been aware of, but unfortunately declined our internal

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1 meeting last week) that has taken an inordinate amount of
2 time (and hours) too."

3 You received that e-mail, didn't you?

4 **A.** I did, yes.

5 **Q.** And look, please, at the last e-mail in the chain, the
6 first page of the document.

7 **A.** Yep.

8 **Q.** First page of the document, Ken. Blow up the top, please.
9 He said:

10 "Basically, Ryan, I need some of your time. It's no
11 good me putting a meeting on your calendar, in the only
12 vacant space you had; get Cole, Paul and Kalyan together,"
13 et cetera, and "'you don't turn up.' Your instant message
14 totally pissed me off. I'm sorry if you think I'm blunt,
15 but you have known me long enough now to understand me."

16 And he says here are the -- "We've burnt hours on."

17 Look at the hours.

18 Getting the gaps filled. Trying to get around the four
19 red flags. One red flag -- he said the most serious is --

20 "Lot/serial number is the most serious."

21 There are:

22 "Two within SuiteCommerce Advanced about
23 functionality that the customer 'believes that they've
24 seen and were told was available.'"

25 He says down there, he says he burnt hours with a

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1 professional service team not wholly focused on this project.

2 "Quite frankly, I'm about to throw it all on your
3 lap."

4 He wants direction.

5 You got this e-mail, didn't you?

6 **A.** Yes, he did send that.

7 **Q.** Okay. Look at Exhibit 497. This is an e-mail chain
8 entitled "Grouse River Status." See that?

9 **A.** Yes.

10 **Q.** And if you will look at the e-mail that starts on
11 August 12th, 2014.

12 **A.** What page is that?

13 **Q.** It's on page 10. August 14th. And your e-mail is
14 August 12th. Let's see where that is.

15 Aah, I have to go through this in -- let's go to the last
16 e-mail. It's the last page, page 14. Last page. And blow it
17 up, please, the bottom.

18 And you see there's an e-mail from you that asks:

19 "What is the . . . status of Grouse River?"

20 You write to the project manager; right?

21 **A.** Yeah. I was checking in on the project.

22 **Q.** H'm?

23 **A.** I was just simply checking in on the project.

24 **Q.** He responds:

25 "I'll know in a few minutes."

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1 That's the next e-mail up. And then he responds more
2 fully -- Cole -- in an e-mail on page 13, with a full status
3 report; right?

4 A. Yeah. I mean, it seems like he -- it's an e-mail status,
5 yes.

6 Q. Yes. And then you have an e-mail on page 12 in the
7 middle. You see that e-mail? You're writing Mr. Specter,
8 Mr. Waldron, Mr. Mason-Jocksch.

9 "The only notes around serialization on the PSE" --
10 What's the PSE?

11 A. It's the professional services engagement record that PS
12 uses to dictate notes that they've learned through the sales
13 cycle.

14 Q. And those notes are kept?

15 A. Sorry?

16 Q. Those notes are kept?

17 A. Yeah, they're kept in NetSuite.

18 Q. And that's different than the project status report?

19 A. Yeah. So the PSE would have been used during the sales
20 cycle to capture relevant information as it pertains to the
21 Grouse River deal.

22 Q. PSE. Do you know where the PSE is?

23 A. Yeah. So it's attached to the opportunity in NetSuite,
24 and the opportunity was what was used by the sales team to
25 estimate the licensing for the product.

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1 Q. It's attached to what?

2 A. The opportunity record.

3 Q. What is the opportunity record?

4 A. Does it really matter?

5 Q. Have you seen it?

6 A. Yes, I've seen it.

7 Q. What does it consist of?

8 A. As I just said, it contains the licensing modules that the
9 customer is going to purchase, in addition to the number of
10 users that are going to use the system.

11 Q. And attached to it is the PSE?

12 A. That's right.

13 Q. Which is all the notes made by professional services
14 people under you; right?

15 A. Jodie Barr was not under me at that time, no.

16 Q. But whoever was under you.

17 A. For --

18 Q. Oh, it was her that made the notes?

19 A. That's right.

20 Q. Okay. And you say:

21 "When I got involved at the 11th hour"

22 A. Um-hmm.

23 Q. What does that mean?

24 A. So, again, we did the sales presentation in November 2013.

25 Jodie Barr had been running the deal up until that point, as

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1 she should because that was her job, at which point Cole
2 under -- Cole and Gary, Gary Specter, who was the VP of retail
3 sales, and Mike Weiss, who's the regional manager, they
4 believed at that time that there was a lot of complexity,
5 specifically around firearms and what we were doing. So they
6 involved me because one of my former roles at NetSuite was
7 principal architect. So in terms of application knowledge and
8 understanding application, I was one of the go-to SMEs, or
9 subject matter experts, at NetSuite.

10 **Q.** Okay. And then look --

11 **A.** And primarily, they brought me in for solution
12 verification, to make sure that ultimately what was in the SOW
13 was what we were going to deliver.

14 **Q.** And let's look at the top of page 10, which is an e-mail
15 you wrote in the same chain to Elliot. You see that?

16 **A.** I do, yes.

17 **Q.** "Elliot, regarding serialization" -- blow it up, please --
18 "how does your solution differ from what we've already proposed
19 to GRO as a change order? I'm seeing three key hurdles. One,
20 we're requiring all serialized sales to originate in NetSuite
21 (very time-consuming); two, there will be no serial number
22 validation at the POS; and three, we're opening this up for
23 human error where the dollar amount in NetSuite doesn't match
24 what's entered in the POS. All three hurdles really apply to
25 the credit memo logic too."

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1 You see that?

2 **A.** I do.

3 **Q.** None of those hurdles were overcome by the time NetSuite
4 went live -- or Grouse River went live with NetSuite at the end
5 of March 2015, were they, sir?

6 **A.** Based on my knowledge, the serialization solution was
7 working at time of Go-Live.

8 **Q.** Now, look, please, at Exhibit Number 16.

9 As context, when the serial number gap issue came to
10 light, the NetSuite sales representative, Cole Waldron, and the
11 project manager, David Mason-Jocksch, began pressing
12 upper-management to approve a -- "CAR" is a customer adjustment
13 request; right?

14 **A.** Yes.

15 **Q.** It means, really, you're going to sign the contract, but
16 we're going to do it for free, basically?

17 **A.** That's right.

18 **Q.** Because they had been waiting for ages to start working on
19 fixing the problem.

20 And this Exhibit 16 deals with this. He explained to the
21 head of professional services, and he says, quote:

22 "When this originally was sold, it was expected that
23 serial numbers for ERP POS would be handled, but this is
24 not possible within standard POS."

25 Right?

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1 A. Where is that again? Where is that again? Sorry.

2 Q. I'm sorry. You're going to have to blow that up.

3 A. Is it on the first page?

4 Q. It's probably on the second page. Can we get to the
5 second page, page 4. Go to page 4, please.

6 A. Oh, okay. So that's just Satish on page 3.

7 Q. No. It's on page 3. Right.

8 A. So that's not an accurate statement.

9 Q. All right. Let's read it. He writes Mr. Iyer, to whom
10 you report, and you. Satish?

11 A. Satish.

12 Q. Satish.

13 "This is a CAR for Change Order 1 serial number
14 within point of sale work. When this was originally sold,
15 it was 'expected' that serial numbers for ERP/POS would be
16 handled, but this is not possible within standard POS."
17 I thought that's what I asked you, but that's what he
18 writes; right?

19 And then at the end, he says (reading):

20 "And the CAR created so that sales funds" -- "so that
21 sales, the sales fund the job."

22 Right? You see that?

23 A. Yes.

24 Q. And just so the jury understands what this is about,
25 NetSuite is organized into what's called vertical silos; right?

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1 A. Right.

2 Q. And that means there is a retail silo. Okay?

3 A. Um-hmm.

4 Q. There's a professional services silo?

5 A. No.

6 Q. Explain to me how it is organized or grouped.

7 A. So within the retail industry, taking retail as an
8 example, you would have direct sales; you would have account
9 management; you would have product management; you would have
10 customer support; you'd have professional services delivery.

11 So it's all within the retail industry.

12 Q. Okay. Fine. But even within retail, those different
13 silos or different groups, there is an issue as to who gets --
14 for purposes of their internal budgeting, who gets billed for
15 doing the work, right, or paid for doing the work?

16 And this is a little about that. It says (reading):

17 "The CAR was created so that sales" -- that's the
18 sales group -- "funded this job."

19 And the reason they wanted the sales group to fund the job
20 is that someone thought that the salespeople were the ones who
21 had oversold it to Grouse River in the first place; right?

22 A. No. That's how it always worked at that time. When a CAR
23 was created, you know, generally, the funds were taken out of
24 sales. So you can't defer that at all and -- no. So, no. I
25 mean, we --

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1 Q. And then he explains in this e-mail chain that he writes
2 to Mr. Iyer that when this was originally sold, it was expected
3 that serial numbers for ERP/EOS -- that's there. I just read
4 that. Sorry. I repeated myself.

5 And then he receives a number of e-mails explaining the
6 internal process to get the CAR approved.

7 Mr. Mason-Jocksch writes, quote:

8 "I despair on this project. I have waited WEEKS for
9 this job number to be created, and find this delay TOTALLY
10 UNACCEPTABLE," all caps.

11 "But this is delaying the serial number work for
12 Grouse River who want to Go-Live next week," closed quote.
13 You see that?

14 A. I'm sorry. Where is that in the document?

15 Q. That document is the e-mail at the bottom of page 1.
16 Ken, blow that up, please. I quoted it exactly, I hope.

17 "I despair on this project."

18 He's writing to --

19 A. I don't need to hear it again. That's what David wrote.

20 Q. H'm?

21 A. That's what David wrote.

22 Q. That's all I was saying.

23 And -- oh, let me ask you this: You periodically
24 complained to others in NetSuite about Mr. Fallis's taking too
25 many hunting trips; right?

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1 **A.** That was definitely a communicated complaint.

2 **Q.** What?

3 **A.** That was a communicated complaint, correct.

4 **Q.** Communicated by you to your colleagues in NetSuite?

5 **A.** That's right.

6 **Q.** You never spoke to Mr. Fallis about that, did you?

7 **A.** Not directly. So I reached out to Gary Specter, who was
8 the retail sales VP. And it was more of, you know, I was a
9 director; so I had responsibility. But having the
10 vice president reach out to a customer and say: Listen, you've
11 been on five hunting trips since the signature of the contract
12 through September and it's significantly delayed the project.
13 Are you going to stop -- are you actually going to work on this
14 project or not?

15 So we felt that the message was best to come from
16 Gary Specter.

17 **Q.** Do you have evidence that you either heard or saw with
18 your own eyes, any writing, anything ever conveying a complaint
19 to Mr. Fallis about being gone too much?

20 **A.** Yeah. So there was an e-mail. So when we did the second
21 revision of the change order for serialized inventory, Kevin
22 Rost was waiting for Glenn to come back from a two-week hunting
23 trip vacation in early August. So that's why there was a delay
24 to the change order execution. And it was written, and there's
25 an e-mail.

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1 Q. From who to who?

2 A. Kevin Rost to David Mason.

3 Q. I'm sorry. The question I asked you is whether NetSuite
4 ever wrote to Grouse River saying, "You're responsible for
5 being here, and if you're not here, the project's going to be
6 delayed and messed up."

7 A. Right. So --

8 Q. Nothing like that happened, did it?

9 A. I know that Gary Specter reached out to Glenn. I don't
10 know if it was written or not. I wasn't copied.

11 Q. When did you cease being involved in this project?

12 A. I guess you could argue never.

13 Q. Never? At any time during this project, sir, any time,
14 did you ever write an e-mail or a letter to Mr. Fallis or
15 anyone else at Grouse River complaining about them having
16 misrepresented something to you?

17 A. No. It happened through conversations. There was direct
18 conversations that Glenn and I had about several things,
19 including serialized inventory, including Kevin Rost's
20 capability to manage and be the system administrator.

21 So it just so happens that we didn't put it in writing,
22 but conversations happened.

23 Q. You mentioned -- let me have those subjects again.

24 Kevin Rost not being up to the -- up to the job; right?

25 A. Well, he was hired to fill two roles that he was incapable

1 of doing.

2 Q. Okay. That's one. What was the other one?

3 A. Serialized inventory. There was a large discussion around
4 serialized inventory prior to the contract execution.

5 Q. And what was that about? What was the misrepresentation
6 there that you accused him of?

7 A. So at that time, we had communicated that serialized
8 inventory could not be sold through the point-of-sale. And
9 what we decided at that time is that, due to the firearm -- you
10 know, due to the complexities of tracking the serial number and
11 the regulatory requirements as it pertains to selling such an
12 item, it was recommended at that time -- and given my NetSuite
13 application experience, it was recommended that they would use
14 the NetSuite terminal to sell the firearms, which made perfect
15 sense because NetSuite handles serialized inventory which is
16 what's in the contract. And NetSuite could also handle the
17 regulatory requirements in terms of capturing the information.

18 So, and at that time, Glenn agreed that the NetSuite
19 solution would work. And it was only after that we went
20 on-site, that he was adamant that we use the point-of-sale to
21 sell firearms.

22 Q. That's not in writing anywhere, is it, sir?

23 A. Doesn't need to be. I had the conversation.

24 Q. And --

25 A. I redact that. No, I take that back. It was in writing.

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1 Q. Wait a second.

2 A. Cole sent an e-mail verifying it.

3 Q. I don't want you to take it back.

4 A. I did. So --

5 Q. I want you to talk to the jury candidly now.

6 A. Okay.

7 Q. You believe in your heart that things between businessmen,
8 representations made, promises made, don't need to be in
9 writing to be significant? You just told --

10 A. They were in writing. So let me answer --

11 Q. Did you not tell -- did you not tell --

12 A. Not in -- they were not in e-mails.

13 (Simultaneous speaking; court reporter interrupts.)

14 **BY MR. SUSMAN:**

15 Q. Should I have that question reread to you?

16 A. I understand the question perfectly. So there were no
17 e-mail summaries between myself and Glenn as to what we agreed
18 to on the phone. There were e-mails sent by Cole as to the
19 serial number solution.

20 And more importantly, as I had mentioned earlier and
21 talked to you guys, the jury, about how the statement of work
22 includes in-scope functionality, the NetSuite ERP section
23 within the statement of work has serialized inventory in scope
24 for ERP and there's no mention of it in point-of-sale.

25 So Grouse River signed a contract knowingly knowing that

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1 we were not going to do serialized inventory in the
2 point-of-sale system, and that was the statement of work that
3 they signed.

4 **Q.** Okay. Fair enough.

5 What other -- you've mentioned two misrepresentations made
6 to you. What other misrepresentations did Mr. Fallis make to
7 you at any time?

8 **A.** I don't think Kevin Rost was a misrepresentation. I mean,
9 they were simply implementation situations that we were dealing
10 with as set forth in the original expectations that were set
11 when I did my presentation back in November as to what did
12 Grouse River have to do to be successful.

13 And to my knowledge, you know, in the points that I went
14 through, I'm not sure they followed a single one.

15 **Q.** Okay. Look now at Exhibit 205. And I'm skipping through
16 these because of time limitations.

17 Do you have 205 before you, sir?

18 **A.** Yes.

19 **Q.** 205 is an e-mail chain in mid-October regarding another
20 defect discovered in the Grouse River point-of-sale setup as
21 set out in the first e-mail on -- we go to the last page --
22 aah, the last e-mail there.

23 "Hello Support."

24 Do you see that?

25 **A.** I do see it, yes.

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1 **Q.** Blow that up so the jury can see it, please.

2 "Hello Support. I'd like to file a defect for two
3 customers, Kit and Ace and Grouse River Outfitters.

4 Business impact: Cannot take credit card payments."

5 See that statement?

6 **A.** Yes.

7 **Q.** And Ms. Messick, the consultant reporting to you on the
8 Grouse River project, reports, if you look at page -- the next
9 e-mail up -- it's actually -- it's -- I'm sorry.

10 She actually writes -- the consultant reporting to you
11 writes (reading):

12 "Two customers both need to Go-Live in two weeks so
13 this needs resolution as soon as possible."

14 You see that e-mail?

15 **A.** Yes.

16 **Q.** And there's a quality assurance guy. What's his name?

17 **A.** He goes by Nick.

18 **Q.** Nick.

19 **A.** Yeah.

20 **Q.** Nick writes (reading):

21 "This is a known gap. This functionality is not supported
22 by the system. And there is enhancement."

23 Can you find that in the -- can you blow that up, please.

24 **TECH ASSISTANT:** Which page?

25 **MR. SUSMAN:** It is -- he writes -- I can't find it

1 right now.

2 MR. KIEVE: Second page.

3 MR. SUSMAN: What?

4 MR. KIEVE: Second page.

5 MR. SUSMAN: Second page?

6 MR. KIEVE: In the middle.

7 MR. SUSMAN: Okay. Page 2, in the middle. Sorry.

8 Thank you.

9 BY MR. SUSMAN:

10 Q. "This is a known gap." You see that?

11 "Karen, this is a known gap."

12 I just read that. (reading)

13 "You need to work with the project managers to make
14 it prioritized. Unless it's done, this feature will be
15 delivered in the next release only."

16 You see that?

17 A. I do.

18 Q. And to which Messick replies (reading):

19 "Okay. So, in other words, we have no way to
20 integrate credit cards in Canada for our customers. If
21 this is the case, why was professional services not aware
22 of it?"

23 Okay?

24 A. Okay.

25 Q. And she writes another e-mail at the same time which

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1 I think is a little far up -- further up.

2 **MR. KIEVE:** It's on the screen below the page.

3 **MR. SUSMAN:** I'm sorry. It is a different e-mail
4 altogether.

5 Look at 503.

6 **MR. KIEVE:** Steve?

7 **MR. SUSMAN:** Yes.

8 **MR. KIEVE:** Take a look right there (indicating).

9 **MR. SUSMAN:** All right. That's part of it. That's
10 just a description of the problem.

11 **BY MR. SUSMAN:**

12 **Q.** Look at Exhibit 503, please. It's another e-mail chain.
13 And you see -- oh, you see, this is what happens here. And I'm
14 sorry to -- it's kind of the same e-mail chain but different.

15 **A.** I know. People copy other people.

16 **Q.** Yes. That's exactly what's happened here.

17 So if you look in the middle of the page of Exhibit 503,
18 you can find Ms. Messick's response. Okay? Page 1. She says
19 (reading):

20 "All, I am sure that Kit and Ace and Grouse River
21 will both be extremely upset and could possibly debook."

22 Meaning, get out of the contract; void the contract?

23 **A.** Um-hmm.

24 **Q.** (reading) "They were sold credit card integration with
25 Mercury Payment Systems, and now you're saying it's not

1 supported."

2 You see that?

3 **A.** I do.

4 **Q.** And the quality assurance guy says (reading):

5 "We have discovered that EMV support is not part of
6 the golden image."

7 **TECH ASSISTANT:** That's further down. It's on the
8 last document.

9 **BY MR. SUSMAN:**

10 **Q.** This is the question.

11 You are aware, aren't you, that Grouse River went live
12 with its new NetSuite system on March 24th? And at the
13 beginning, very beginning, from the get-go, their registers,
14 which they call tills, could not accept credit cards with those
15 chips in it that are what was used in Canada at the time?

16 **A.** Right. So my understanding is that there was a system
17 flag that had been marked incorrectly and really had nothing to
18 do with this functionality working or not in Canada.

19 **Q.** And you are aware that debit cards couldn't get -- they
20 couldn't get debit cards working for several months after going
21 live; right?

22 **A.** I don't -- I don't know.

23 **Q.** Do you know what an issue tracker is?

24 **A.** I do.

25 **Q.** And what is an issue tracker?

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1 **A.** So an issue tracker is used to manage customer issues and
2 requests as it pertains to the implementation, both during the
3 implementation and after Go-Live. So that way, we can assign
4 owners and prioritize and properly triage and resolve the
5 issues at hand.

6 **Q.** Would you look, sir, at Exhibits 217 and 250. And tell
7 the ladies and gentlemen of the jury whether those are what is
8 known as issue trackers.

9 **A.** So those are issue trackers.

10 **Q.** Okay. And would you look, please, at -- the biggest one
11 appears to be 250, page 1 through 5. Can you look at that,
12 sir.

13 **A.** Yep, I see it.

14 **Q.** Okay. And the dates on this -- this is a multi-column
15 document that has the incident date. And on this particular
16 document, it runs from October 17th, 2014, all the way over
17 to -- I think the last day is May 2015, the dated one.

18 Do you see that?

19 **A.** I do, yes.

20 **Q.** Okay. The issue is described in a column there called
21 "Issue Description."

22 **A.** Yep.

23 **Q.** The owner, meaning the person responsible, is identified
24 as a NetSuite employee; right?

25 **A.** Yes. Mon was a NetSuite employee.

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1 Q. The status is listed, and there's a column called "Defect
2 Or Enhancement"; right?

3 A. Correct.

4 Q. So whoever -- as I understand it now, just so we get
5 clear, a defect, NetSuite's responsible for; an enhancement,
6 Grouse River's got to pay for?

7 A. So how are you defining "defect," and how are you defining
8 "enhancement"?

9 Q. I don't define either of them. I don't create this chart.
10 How does NetSuite -- or how did NetSuite, at the time these
11 entries were made, define "defect"?

12 A. Okay. So that's a great question.

13 Q. H'm?

14 A. That's a great question.

15 Q. I hope I'm asking great questions.

16 A. No, it's a good question.

17 Q. Go ahead.

18 A. Because in the software world, during the development
19 cycle, when you're developing a new product, you would refer to
20 as a defect as there's a code problem. Right?

21 In the situation of issue trackers and cloud-based
22 computing and how it worked is that, even though it wasn't
23 necessarily right, it's how it was done. I don't know. Right
24 or wrong doesn't matter.

25 But the support team -- the functional team would take the

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1 initial look. We'd say: Okay. It's not working as expected.

2 It would then go to our support teams. They would provide
3 additional, you know, Tier 2 support or what have you.

4 But ultimately, in order to have development look at it,
5 just to look at it, it would be defined as a defect.

6 So just because it's a defect doesn't mean it's a defect.
7 It could turn out to be something in the functional application
8 that wasn't flipped right. It could be nothing. It could be
9 an enhancement, an "enhancement" being, you know, in the
10 NetSuite world, there are -- an enhancement refers to something
11 where NetSuite doesn't -- it just doesn't natively have that,
12 you know --

13 **Q.** Let's just look --

14 **A.** -- out-of-the-box functionality.

15 **Q.** Let's look at this column. Okay? This column right
16 there. Blow that up, please.

17 **THE COURT:** Why don't we do this. We're just about at
18 a breaking point for the court reporter and --

19 **MR. SUSMAN:** I just --

20 **THE COURT:** If you want to finish up a couple
21 questions, that's fine. I just didn't know if --

22 **MR. SUSMAN:** I want to get beyond these documents.

23 **THE COURT:** Okay.

24 **MR. SUSMAN:** Just the bottom half. I don't care what
25 you blow up. We want to show the jury how to read this.

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1 **BY MR. SUSMAN:**

2 **Q.** This column there is the one I'm talking about. You see
3 the -- and it lists: Defect, enhancement, defect, enhancement,
4 defect, enhancement. And this goes on and on, and there are
5 several of these. And the jury can look at them, now that we
6 have an understanding.

7 But this is an accurate contemporaneous record of the
8 issues of the Grouse River project; correct?

9 **A.** Yes.

10 **MR. SUSMAN:** Thank you. I'm there, Your Honor.

11 **THE COURT:** Okay. All right. So we'll take a
12 15-minute break, and then we'll go through our last session of
13 the day. I know that especially tomorrow, we promise you a
14 1:30 hard stop. You know that I'm trying to get through as
15 much as I can to minimize overall impact. So we'll get through
16 one more of these sessions, and then we'll be finished for
17 today.

18 Until then, the admonition remains in place. And
19 the court's in recess for 15 minutes.

20 (Recess taken at 12:15 p.m.)

21 (Proceedings resumed at 12:31 p.m.)

22 (Proceedings were heard in the presence of the jury:)

23 **THE COURT:** All right. The jury is in the room.
24 Everyone may be seated.

25 Mr. Susman, you may resume your examination.

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1 **BY MR. SUSMAN:**

2 **Q.** Would you look at Exhibit -- by the way, I need to ask you
3 a question.

4 We were required in this case to furnish each other, both
5 sides, whatever exhibits we intended to ask a witness about.
6 Everything I am asking you about I furnished to opposing
7 counsel a few days ago. Did you have an opportunity to review
8 all these documents or is this the first time you're seeing
9 them?

10 **A.** Some content is new, some content is not. So I have seen
11 some of it, yes.

12 **Q.** You did see my list of the documents I furnished to the
13 other side?

14 **A.** Yes.

15 **Q.** Did they pull the documents for you?

16 **A.** Yeah.

17 **Q.** Okay. So this is -- I'm asking --

18 **A.** There's a binder like that tall, so I did my best; right?

19 **Q.** I understand, sir.

20 **A.** Okay.

21 **Q.** Okay. Exhibit 31 is an e-mail chain you are included in.
22 Can you identify that, sir?

23 **A.** (Witness examines document.) Yeah. So this e-mail is the
24 results -- NetSuite holds what's called SuiteWorld every year
25 where it's a users conference where all the users come to learn

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1 about the latest and greatest and then existing product
2 functionality and --

3 Q. I just asked you whether you can identify it.

4 A. Well, I'm -- yeah, so I can identify it because this was
5 created right after SuiteWorld as a result of SuiteWorld.

6 Q. Okay. Would you look at Exhibit 31A? 31.

7 A. (Witness examines document.) I don't have 31A.

8 Q. Here it is.

9 Put that up, please. And could we have the -- let's go to
10 the next page, please.

11 And the next page.

12 Next page.

13 Ah. Mr. Chi on May 4th, 2015, sends to a large group of
14 people, including you and Mr. Swan and others (reading):

15 "I hope you are enjoying SuiteWorld so far. As
16 discussed, I am relaying the detailed list of items that
17 GRO provided for us."

18 And then you see a list there; right?

19 And scroll up, please.

20 Okay. And then Chi says -- and now he calls it GRO -- the
21 Re is "GRO Outstanding Issues" (reading):

22 "Here is the updated agenda that we received on
23 May 1st that I sent out on May 4th to the team to prep for
24 our meeting with them."

25 And would you look at the attachment?

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1 Could we have the next page of the document, please.

2 **A.** (Witness examines document.)

3 **Q.** There's a chart attached. Do you see the chart attached?

4 **TECH ASSISTANT:** Sorry?

5 **MR. SUSMAN:** You don't have a chart attached?

6 **TECH ASSISTANT:** I have this e-mail chain, the
7 specific exhibit, page 7.

8 **MR. SUSMAN:** 31A.

9 **TECH ASSISTANT:** Standby. Formatting issue.

10 (Pause in proceedings.)

11 **MR. SUSMAN:** Ah.

12 **Q.** 31A is another issue tracker document -- correct -- at the
13 end?

14 **A.** Yes. It's one that we've -- it was a previewed exhibit
15 that we already looked at.

16 **Q.** Okay. And it lists, as I understand it, the open issues
17 as of July 2015, outstanding issues; correct?

18 **A.** (Witness examines document.) Right.

19 **Q.** Okay. Do you have 44A before you?

20 **A.** (Witness examines documents.) Sorry. I have 44 but not
21 44A.

22 **THE COURT:** It might just be one Exhibit 44. We
23 talked about this before. Is this the one that we talked about
24 where there are two exhibits behind the tab and we're going to
25 differentiate them?

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1 **MR. SUSMAN:** I think that's right, Your Honor.

2 **THE COURT:** And so maybe you could --

3 **MS. AGUILAR:** I'm not sure what's in the binder
4 because there was a 44 and they gave us a 44A, and what we
5 talked about replacing was what had been in 44 -- what they
6 gave us is 44 so we don't --

7 **THE COURT:** We don't need to worry about that part of
8 it now what's in the binder because we're true that up at the
9 end. I'm just more concerned about what the actual exhibit is.

10 **MS. AGUILAR:** Well, I'm concerned that they're giving
11 the witness the appropriate document.

12 **THE WITNESS:** All right. I got it.

13 **BY MR. SUSMAN:**

14 **Q.** You got it?

15 **A.** Yep.

16 **THE COURT:** Can you show it to counsel?

17 **MS. XI:** Yes. I mean, we sent them over five days
18 ago.

19 **MS. AGUILAR:** But they changed since you sent them to
20 us.

21 **THE COURT:** Can you just quickly show the actual
22 document just because of the substitution issues just so they
23 can lay eyes on it? And then assuming it's okay, you can bring
24 it up. It will be fine.

25 This is what we discussed this morning, but we're going to

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1 call it 44A no matter what in the binder.

2 **MS. AGUILAR:** This is two different documents that are
3 combined into one.

4 **THE COURT:** It doesn't matter because as long as it's
5 okay, we can label it however we want and we're just calling it
6 44A, and we can call it 44A-1 and 44A-2 at the end of the day
7 if we need to distinguish between them.

8 **THE WITNESS:** Okay.

9 **BY MR. SUSMAN:**

10 **Q.** Okay. And now would you look at Exhibit 260?

11 **A.** (Witness examines documents.) Got it.

12 **Q.** Do you recognize Exhibit 260 as an e-mail written by
13 Mr. Chi to Mr. Go with a copy to Mr. Ganesan; right?

14 **A.** Right.

15 **Q.** And he says in this e-mail dated October 22nd, 2015
16 (reading):

17 "At a high level, these are the outstanding issues
18 for each functional area."

19 And can you put that up on the board?

20 And you see this list?

21 **A.** I do, yes.

22 **Q.** Have you seen this list before?

23 **A.** Yes.

24 **Q.** And he then, even on the last page -- let's go -- I'm not
25 going to go through them all because all the issues are here.

1 Would you go to the next page, please, page 2, and
2 highlight that.

3 (reading)

4 "SuiteCommerce gift cards cannot be sold seamlessly.
5 Upgrade and fix" --

6 And he lists all these issues. (reading)

7 "Matrix items do not update correctly when back in
8 stock.

9 "In addition, I'm listing several issues that seem to
10 be gaps in either the sales or partner knowledge areas
11 that are critical gaps for Grouse River.

12 "Sitemap generation not functional. Was a known
13 issue that was not relayed to us.

14 "Internal reporting of eCommerce analytics and also
15 not communicated to Grouse River."

16 And go ahead to the bottom of that. I think that's it on
17 that screen. Have we covered them all?

18 Yeah. And then there's attached a chart that looks like
19 an issue tracker; right?

20 **A.** Yeah.

21 **Q.** It shows what's still open, what's closed. It's another
22 example of how you kept track of these things so action could
23 be taken; is that correct?

24 **A.** Yeah. I mean, to me it looks like the same issue tracker
25 that we're looking at over a continual period of time that

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1 continually gets smaller.

2 **Q.** Finally, my last question is you -- would you look,
3 please, at Exhibit 241. It's the last one. It may be the last
4 one.

5 **A.** I don't have it.

6 (Witness examines document.) Oh, okay.

7 **Q.** Can you tell the ladies and gentlemen of the jury what
8 that is?

9 **A.** This is a 10-Q for the Securities and Exchange Commission.

10 **Q.** Filed by Oracle?

11 **A.** (Witness examines document.) It looks so, yes.

12 **Q.** Oracle is your current employer?

13 **A.** Oracle Corporation, yes.

14 **Q.** You work for Oracle Corporation; right?

15 **A.** I do, yes.

16 **MR. SUSMAN:** Pass the witness, Your Honor.

17 **THE COURT:** All right. Ms. Ray?

18 **MS. RAY:** Thank you, Your Honor.

19 **THE COURT:** Cross-examination.

20 (Pause in proceedings.)

21 **MS. GREENWALD:** Your Honor, may I approach? These are
22 specific to the documents used in the direct.

23 **THE COURT:** Okay.

24 (Pause in proceedings.)

25 **MS. RAY:** Are you ready, Your Honor?

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1 **THE COURT:** Yes. You may proceed.

2 **MS. RAY:** Thank you.

3 **CROSS-EXAMINATION**

4 **BY MS. RAY:**

5 **Q.** Good afternoon, Mr. Murphy.

6 **A.** Hi.

7 **Q.** I know it's been a long morning, but a little bit longer
8 and then we'll let you get out of here.

9 Mr. Susman jumped around a good bit. There was a couple
10 of times where an issue came up that I think I'd like to right
11 at the outset just pull together for the jury, if we can do
12 that. And what I'm talking about is serialized inventory. Do
13 you understand when I say "serialized inventory"?

14 **A.** Yes.

15 **Q.** Okay. And is serialized inventory a functionality that
16 NetSuite can handle?

17 **A.** Yes. So serialized inventory is capable within the
18 NetSuite ERP application.

19 **Q.** Okay. In 2013 and 2014, was serialized inventory a
20 functionality that NetSuite can handle?

21 **A.** Yes, in NetSuite ERP.

22 **Q.** Okay. And you were a participant in the first in-person
23 meeting between NetSuite and Grouse River; correct?

24 **A.** Correct.

25 **Q.** And that was the presentation that you made by phone in

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1 November of 2013; correct?

2 A. Correct.

3 Q. Okay. Now, you mentioned earlier an e-mail regarding
4 serialization with Cole Waldron; is that right?

5 A. Yes.

6 Q. Let's take a look at that. It's not in your binder. I'm
7 going to put it up on the screen. It's TX169.

8 Do you see that Mr. Waldron wrote this in December of
9 2013?

10 A. I do, yes.

11 Q. Okay. And you're not copied on this; correct?

12 A. (Witness examines document.) I am not, no.

13 Q. Okay. Let's look at just the first line he writes
14 (reading):

15 "As a follow-up item from our visit last week, I've
16 included the outstanding questions and answers below."

17 Do you see that?

18 A. I do, yes.

19 Q. Did you have any conversations with Mr. Waldron after the
20 November meeting about questions that came up from
21 Grouse River?

22 A. We did have certain conversations, yes.

23 Q. Okay. And were you aware that he would be following up
24 with Grouse River in response to those questions?

25 A. Yes.

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1 Q. And if we can look down below the chart -- I'm sorry. I
2 don't have the document with me. It might be easier.

3 Thanks.

4 And if we can go to the second page, please, John. And I
5 want to look for "Support for Serialized Transactions." And
6 can you highlight that for us? Thank you.

7 Okay. Mr. Murphy, is this what you were referring to when
8 you said that you believed that Cole Waldron had discussed --
9 had put something in writing about serialization for
10 Grouse River?

11 A. No. There was a subsequent e-mail that was sent by Cole
12 over to Grouse River about handling serialized inventory for
13 firearms.

14 Q. Okay. So do you see that in this e-mail he writes
15 (reading):

16 "We can leverage NetSuite's serialized inventory for
17 everything, from receipt to sale, if validation is
18 required. This would mean having a NetSuite back-end
19 log-in at the gun counter"?

20 A. Yes.

21 Q. Can you describe for the jury what that means?

22 A. So NetSuite inherently within the application tracks
23 inventory, and with that comes serialized inventory. So what
24 we're saying is that Grouse River can inventory their firearms
25 in NetSuite, they can track their firearms by serial number.

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1 NetSuite also has sales functionality where it can take credit
2 cards.

3 So the thought was -- is that if I as a consumer come in
4 to buy a firearm, they would create a sales order, it would
5 allocate that firearm, they would then go to specific records
6 to fill out the regulatory requirements, and then within
7 NetSuite they would proceed to checkout using the credit card
8 functionality to complete the sale.

9 So -- and with that, we can then print the receipt to the
10 customer, and this was all using NetSuite in a single-contained
11 solution.

12 **Q.** And you see that the next sentence says (reading):

13 "If serial number validation isn't a requirement, we
14 can use NetSuite point of sale for the transaction to
15 enter the serial number at sale."

16 Do you see that?

17 **A.** I do.

18 **Q.** But serialized inventory required validation like
19 firearms?

20 **A.** Right.

21 **Q.** Was Mr. Waldron here addressing that instance in this
22 section?

23 **A.** Absolutely.

24 **Q.** Okay. So he was telling Grouse River in December of 2013
25 that the solution for the point of sale would be through the

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1 ERP; is that correct?

2 **A.** That's right, because our point of sale product at that
3 time didn't have serial number validation. So selling
4 something as obviously regulatory and serious as a firearm that
5 would need to be tracked -- right? -- we couldn't sell, you
6 know, a nonvalidated item from the point of sale. It had to go
7 through a validated system to pass regulatory requirements.

8 **Q.** Okay. And this is December of 2013; correct?

9 **A.** Correct.

10 **Q.** And did you subsequently have a phone conversation with
11 Mr. Fallis where you also discussed this topic?

12 **A.** Yes. So as a result of our communication, Glenn and I had
13 a conversation describing the solution of using NetSuite, you
14 know, as the system to process the firearm sales; and it was
15 agreed to at that time that that was the solution that we were
16 going to go with just because the point of sale didn't offer
17 serial number validation for -- so it just -- it wasn't,
18 like -- if Glenn did not want -- you know, if he was adamant
19 about using our point-of-sale system to validate firearms, one,
20 he should not have signed the contract or moved forward with
21 the deal, but it was agreed to that we would use NetSuite, you
22 know, as the system of record and sales system to sell the
23 firearm.

24 **Q.** And when you say "NetSuite" -- just so the jury is clear,
25 when you say "NetSuite" in that answer that you just gave, can

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1 you explain what you mean by "NetSuite"?

2 **A.** So NetSuite is a suite; right? Hence the name. But
3 NetSuite core is ERP and CRM, and within the ERP functionality,
4 it includes inventory management, purchasing, order management,
5 customer invoicing, et cetera, and then all the financials
6 around it.

7 So when I refer to "NetSuite" in it's kind of informal
8 term, I'm referring to the ERP and CRM functionality outside of
9 the point of sale in eCommerce despite both of them being
10 built, you know, within the product.

11 **Q.** But just so the jury is clear, when you had a conversation
12 with Mr. Fallis, did you make clear to him that the NetSuite
13 point of sale could not sell serialized items like firearms at
14 that time period?

15 **A.** Hundred percent clear.

16 **Q.** Okay.

17 **A.** Because it was either -- he either accepted the solution
18 or we didn't move forward. It was that simple.

19 **Q.** And based on your conversation with Mr. Fallis, did he
20 understand that NetSuite point of sale did not sell serialized
21 items like firearms at that point?

22 **MR. SUSMAN:** Your Honor, leading, number one. I have
23 no problem her asking him what was said, but this is leading.
24 Did he understand -- and foundation. How can she know what he
25 understood.

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1 **THE COURT:** All right.

2 **MS. RAY:** I can set a foundation, Your Honor.

3 **THE COURT:** All right. Why don't you lay a
4 foundation. So I'll sustain the objection.

5 **BY MS. RAY:**

6 **Q.** So you had a conversation with Mr. Fallis about this
7 issue; correct?

8 **A.** Correct.

9 **Q.** And did you get any feedback from him that gave you any
10 indication of whether he accepted and understood your
11 description of the limitations of the NetSuite point of sale at
12 that time?

13 **A.** I mean, in my conversation with Glenn, the solution was
14 proposed and he understood at that time that our point of sale
15 did not handle serial number validation, and then that was the
16 solution we were going to move forward with.

17 **Q.** Okay. And you heard Mr. Susman say to you, "Well,
18 wouldn't you want to put that in writing if you had had that
19 conversation?" Do you remember that?

20 **A.** I do.

21 **Q.** Where did you put it in writing that that was the solution
22 that Grouse River and NetSuite were going to move forward with?

23 **A.** We put it in the statement of work.

24 **Q.** It's in the statement of work, isn't it?

25 **A.** Right.

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1 **Q.** Okay. Let's look at it.

2 The statement of work is the contract that was signed on
3 December 26, 2014; correct?

4 **A.** Correct.

5 **Q.** Can you show the jury -- can we look at the Table of
6 Contents, John? It's on page 2.

7 Can you show the jury in the statement of work what
8 section relates to the ERP functionality?

9 **A.** Yeah. So within Section 2.2, Scope Summary, starting on
10 page 9, the scope of work is broken down by functional area so
11 the first -- you know, from a scope detail perspective, we're
12 outlining the functionality as it pertains to NetSuite ERP/CRM.
13 Then it transitions to -- there's some web -- you know,
14 web-related items, but then it transitions to point of sale and
15 then we further define. So it's sequential; right?

16 So the SOW --

17 **Q.** Mr. Murphy, just to interrupt you. You're speaking really
18 fast.

19 **A.** I'm really sorry.

20 **Q.** That's okay.

21 **A.** I feel like I'm on a sales presentation call presenting an
22 overview, but I'm not.

23 **THE COURT:** It's totally okay. It's just slow it
24 down, and then this is a trick someone told me, and then do it
25 50 percent slower than that.

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1 **THE WITNESS:** All right.

2 So, anyhow --

3 **BY MS. RAY:**

4 **Q.** Sorry. My question --

5 **A.** 2.2, Section 2.2, has the verbiage that contains
6 serialized inventory as in scope.

7 **Q.** Okay. So can we look at Section 2.2, which starts on
8 page 9? And this is where -- is it your testimony that this is
9 where the scope discussion starts?

10 **A.** This is where it begins, yes.

11 **Q.** Okay. And which section deals specifically with the ERP?

12 **A.** (Witness examines document.) So the scope detail starts
13 in Section 2.3.

14 **Q.** Okay. And can we look at page 11?

15 And this is the functional scope detail, 2.3; is that
16 correct?

17 **A.** Yes.

18 **Q.** And can we look, then, at page 13?

19 And we're still on Section 2.3; correct?

20 **A.** Right.

21 **Q.** Okay. And can you show the jury where it says "serialized
22 inventory" under the ERP?

23 **A.** The Section 2.3.3 identifies the process detail by
24 functional area within NetSuite ERP. And so on page 13 at the
25 top is design to build, which is the inventory management piece

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1 of NetSuite; and under item transactions it states serialized
2 inventory is in scope. So if it had not been there and it had
3 been below, then it would have been excluded from scope but it
4 was in scope for NetSuite ERP.

5 Q. So this document, the same network, lays out the scope;
6 correct?

7 A. Correct.

8 Q. So when something is included in one of the sections of
9 the NetSuite offering, if it's included, it's in scope; if it's
10 not here, it's out of scope? Is that right?

11 A. Yes.

12 Q. Okay. So can we turn to the section that deals with the
13 point-of-sale system?

14 Can you tell the jury where that is?

15 A. (Witness examines document.) So that is at Section 2.7,
16 page 21.

17 Q. So can you explain what the title 2.7 is?

18 A. So the title is "Retail Anywhere" and that's what we
19 referred to the point-of-sale product at that time.

20 Q. Okay. So everything that the point of sale is going to do
21 for Grouse River is in this section?

22 A. That's right.

23 Q. And does this section include anything about serialized
24 inventory?

25 A. It does not.

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1 Q. Okay. Can we -- John, do you mind just showing the
2 entirety of that section to the jury, please.

3 Is it just these two pages, 21 and 22?

4 A. Yes.

5 Q. So when it gets to 2.8, that's a different section?

6 A. Correct.

7 Q. Okay. Did Mr. -- did you have an opportunity to go over
8 this statement of work document and describe and confirm the
9 scope with Mr. Fallis?

10 A. Yes. So after the SOW was sent to Grouse River, it was
11 followed up subsequently doing a complete SOW review walking
12 through the functionality of what would be delivered.

13 Q. And then after the statement of work is signed by -- well,
14 let me ask you this: Did Mr. Fallis sign the statement of
15 work?

16 A. He did, yes.

17 Q. Okay. And after the statement of work is signed, what is
18 the next step that the parties turn to?

19 A. So after the contracts are executed, that's where we staff
20 the projects, we send a welcome letter, and we move into the
21 initiate/analyze the project.

22 Q. And is that section called the business mapping process
23 section?

24 A. Correct. So -- you know, so there's the initiate where we
25 staff it, send out the welcome letter, we do the project

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1 kickoff; and then from there, we send business process mapping
2 questionnaires, which allows customers by functionally -- by
3 functional area to detail out their project processes in detail
4 specific to process work flows and, et cetera, which then
5 allows us to go on-site. The consulting team goes on-site and
6 does a deep dive into each functional area of how they run
7 their business at the detail process level. And then from
8 there we design a business requirements document.

9 **Q.** And at some point during that process, did it become
10 apparent to NetSuite that Grouse River wanted to do something
11 other than what they had agreed to in the statement of work
12 with regard to serialized items?

13 **A.** So at that time it was communicated that the point of sale
14 had to transact firearms.

15 **Q.** And who was that communicated by?

16 **A.** It would have been communicated by Grouse River.

17 **Q.** Who specifically at Grouse River communicated that?

18 **A.** I don't know. I was not there.

19 **Q.** Okay. And did you subsequently come to learn that that
20 had been communicated by Grouse River, that they now wanted to
21 use the point of sale to transact firearms?

22 **A.** Yes, because it was identified as a gap within the BRD and
23 then there was internal discussions around this.

24 **Q.** Okay. That is a key point here. There's a lot of
25 discussion about what is -- what a gap is without an

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1 opportunity to ask you.

2 **MR. SUSMAN:** Leading and this is not proper for direct
3 examination.

4 **THE COURT:** Okay. So I would -- you know, on the one
5 hand, I'll sustain the objection. On the other hand, you did
6 the same thing with overcharacterizing. So let's just call it
7 a draw, and you can just reask -- reframe your question a
8 little.

9 **MS. RAY:** Sure.

10 **THE COURT:** She's just try to move along to get us
11 through this witness so I appreciate that effort.

12 Okay.

13 **MS. RAY:** Thank you, Judge.

14 **Q.** Mr. Murphy, can you explain to the jury what a gap is in
15 the context of the business requirements document?

16 **A.** So a gap is a functionality or process that is being
17 requested by the customer that is beyond the in-scope elements
18 of a contract within the statement of work.

19 **Q.** Is a gap something that you promised that you later find
20 out you cannot do?

21 **A.** No.

22 **Q.** What is a change order?

23 **A.** So a change order is an addendum to the original statement
24 of work. So say we identify a gap, such as serial items, and
25 it is determined that we do have a solution around selling, you

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1 know -- somehow we figure out a way to sell serial numbers at
2 the point of sale. We would then craft a change order, which
3 references the original statement of work.

4 It's basically just a contract modifier that includes the
5 new scope of what we're going to deliver and then the price or
6 the level of effort that it would actually take to deliver that
7 functionality.

8 Q. If the functionality that you are crafting, that you are
9 building, is included in the statement of work, do you need a
10 change order to execute it? Do you want me to rephrase?

11 A. Okay.

12 Q. If the function --

13 A. I mean, we would need a change order if the customer
14 agrees that what they agreed to originally is not going to work
15 and they need additional functionality to make that happen,
16 which would have been done through a change order.

17 Q. Okay. So can we take a look at the first change order
18 looking at Trial Exhibit 488?

19 When NetSuite learned that Grouse River wanted to do the
20 serialization differently than was in the statement of work,
21 did NetSuite -- what did NetSuite do?

22 A. So NetSuite spent a lot of time -- the project resources
23 spent an exorbitant amount of time devising solutions that were
24 not in the original scope. So we spent an enormous amount of
25 time with the point of sale team, the ERP team, to put together

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1 a functional solution that would allow Grouse River to accept
2 the cash and credit at the register for the firearm but then
3 communicate back to NetSuite to do the serial validation.

4 We still had to do the serial validation, but primarily
5 Grouse River was -- you know, they did not want to accept using
6 NetSuite to process the sale and it had to happen at the point
7 of sale. So we crafted this change order and presented it in
8 the beginning of August based on our initial solution to them.

9 **Q.** Okay. And did this change order describe a proposal for
10 brand new functionality for NetSuite?

11 **A.** So it did. And so, one, it included how we were going to
12 sell firearms, which are serialized; but then a new requirement
13 came about that other items within the store also had serial
14 items, such as scopes and GPS units. We then learned that that
15 also had to go through the same process, and so that was also
16 included in this change order.

17 **Q.** So when you say "we learned that that had to go," are you
18 saying that that was something that the customer demanded?

19 **A.** I mean, they needed that functionality in order -- well,
20 according to Grouse River, that functionality was required to
21 run their business, yes.

22 **Q.** Okay. And so then you provided them with this change
23 order. What happened when they received this change order?

24 **A.** So there was a stall for two weeks where Kevin Rost was
25 trying to have Glenn approve it but he was gone hunting for two

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1 weeks.

2 When he returned, we then received a whole new set of
3 requirements and validations that had to happen between the
4 point of sale and NetSuite, which then took us back to the
5 drawing board where we had to completely rewrite the change
6 order and add additional functionality, which we were able to
7 deliver that new change order in September.

8 **Q.** And what happened when you delivered the second change
9 order with even more additional out-of-scope functionality?

10 **A.** Well, at that time -- so there was also the understanding
11 that Grouse River did not want to pay for it.

12 So I want to be very clear about NetSuite's revenue -- you
13 know, their revenue model; right? It's based on subscriptions.
14 And we're really worried -- you know, NetSuite and Oracle were
15 very concerned about the longevity of a customer as they
16 continue to renew with our company and be successful.

17 So at that time being that NetSuite -- or being that
18 Grouse River was an early adopter of the omni-channel solution,
19 you know, there was a joint investment and we wanted to ensure
20 that they were successful so we moved forward to absorb the
21 cost.

22 And also it allowed us to differentiate ourselves in the
23 market where we're going to make an investment to allow
24 companies to sell firearms using NetSuite because at that time,
25 and even today, we have companies that sell firearms. So we

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1 took -- you know, it was an investment that we made. It was an
2 executive decision to, one, help out Grouse River as well as,
3 you know, move the product forward.

4 **Q.** So did the need to create these change orders, this
5 customized solution, and get sign-off on it from Grouse River,
6 did that delay the project?

7 **A.** Significantly.

8 **Q.** Did it add complexity to the project?

9 **A.** An enormous amount of complexity.

10 **Q.** Did it frustrate the team that was working on the project?

11 **A.** Absolutely.

12 **Q.** Did it make it riskier for Grouse River to be the first to
13 use a brand new functionality demanded to be built for them?

14 **A.** Taking on a new product always has inherent risk, of
15 course.

16 **Q.** But you did it for free?

17 **A.** We did.

18 **Q.** Was that because you hadn't told Grouse River that point
19 of sale didn't handle serialized inventory? Was it an
20 admission that you messed up?

21 **A.** Absolutely not.

22 **Q.** Why did you do it for free?

23 **A.** As I just discussed, I mean, we wanted to ensure that they
24 could run their business with how they wanted to run their
25 business despite having made the original decision not to use

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1 the point of sale. I mean, we wanted to make them successful
2 and it was that simple.

3 Q. So you built this brand new point of sale serialized
4 inventory functionality and you rolled it out to Grouse River.
5 Were they able to use it after they turned on the NetSuite
6 software?

7 A. They were.

8 Q. Were they able to sell guns through the point of sale?

9 A. They were.

10 Q. All right. Mr. Mason-Jocksch was not involved in the
11 sales process; correct?

12 A. Not at all, no.

13 Q. So he did not know the discussions that had taken place
14 with regard to the serialized inventory between NetSuite and
15 Grouse River; correct?

16 A. I think he did know because it would have come up during
17 the sales to professional services and knowledge transfer. So
18 when I see his e-mails, I'm seeing a frustrated employee with
19 the process.

20 Q. Okay. So I want to back up. We're going to reintroduce
21 you to the jury a little bit.

22 Where do you live currently, Mr. Murphy?

23 A. I live in Denver, Colorado.

24 Q. Okay. Are you married?

25 A. I am, yes.

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1 Q. Do you have children?

2 A. I have three.

3 Q. And you discussed being, in your current role, the
4 professional services director for the restaurant and
5 hospitality vertical.

6 A. Correct.

7 Q. You rejoined the company pretty recently; right?

8 A. I did. In January of this year.

9 Q. Okay. And prior to that, you'd worked at NetSuite from
10 what time period?

11 A. Yeah. So the years it was 2008 to 2017.

12 Q. And can you explain to the jury why you left in July of
13 2017?

14 A. Yeah. So I had an opportunity to work for a
15 half-a-billion-dollar enterprise corporation out of Salt Lake
16 delivering NetSuite across five global subsidiaries, and it was
17 just a fantastic opportunity to try something new. So that's
18 what I did.

19 Q. But it was still related to NetSuite?

20 A. It was.

21 Q. Okay. And then why did you come back to rejoin the
22 company?

23 A. So as part of that project, Eide Bailey, who's an
24 accounting firm and who has a NetSuite practice was involved in
25 the project and ultimately that's why I was brought in, to make

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1 things great. I don't know how else to say it. I mean, make
2 them successful. And Eide Bailey saw the work that I did and
3 they recruited me over, and I joined Eide Bailey in January of
4 2018.

5 **Q.** Okay. And then after that, why did you return?

6 **A.** So I spent a year there as the director in their NetSuite
7 practice, and then I ended up having a conversation with Pat
8 Merrill, who oversees Services North America, and there was an
9 opportunity to come in and build restaurant and hospitality
10 from the ground up; and given my experience at NetSuite, you
11 know, as an architect, a program manager, director, having the
12 opportunity to build something from the ground up is not
13 something that you have every day, so I took it on.

14 **Q.** So as we discussed -- as you discussed with Mr. Susman, at
15 the time that you were at NetSuite when the Grouse River
16 project was happening, you were in the Professional Services
17 Group; right?

18 **A.** Correct.

19 **Q.** Okay. And can you describe for the jury generally your
20 responsibilities in that role?

21 **A.** Yeah. So it was -- you know, obviously the organization
22 evolved; but, you know, I had a large organization with
23 practice managers who then managed consultants as well as
24 project managers, and we oversaw, you know, and delivered a
25 portfolio of retail customers.

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1 You know, I also worked hand on -- you know, hands on with
2 product and marketing, as well as, you know, sales. I did a
3 lot of sales support still and so on. You know, just the
4 typical functions to drive the industry forward.

5 **Q.** Okay. So I'm going to turn to the time period when
6 NetSuite started talking to Grouse River --

7 **A.** Uh-huh.

8 **Q.** -- and talk a little bit about that meeting that you
9 participated in.

10 Do you know who from Grouse River was in attendance at
11 that November 2013 meeting?

12 **A.** Yes. I know Glenn, Troy, and, you know, others within his
13 organization I'm sure. I think -- there were several people
14 there. I mean, from the conference perspective, the room
15 sounded full, so...

16 **Q.** Okay.

17 **A.** Yeah.

18 **Q.** And what was the overall purpose of that meeting?

19 **A.** So threefold really. One, for, you know, our sales
20 engineers and sales reps to see the day-to-day operations, to
21 kind of, you know, understand their business just from a core
22 operational perspective; the second was to demo the product in
23 terms of what had been discussed to that point; and the third
24 component was for me to present our service delivery
25 capabilities, you know, in the idea that Grouse River would

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1 move forward and they would use NetSuite professional services
2 to deliver the implementation.

3 Q. Now, Grouse River's counsel went through the presentation
4 a little bit with you. I'd like to give you a little bit more
5 time to describe exactly what your part of the presentation
6 was.

7 If we can look at TX142, which is up on your screen but
8 also in your binder.

9 A. Okay.

10 Q. So let's look at page 99, and can you tell the jury again
11 what this presentation -- this part of the presentation is?

12 A. (Witness examines document.) Yeah. So this is the start
13 of my presentation.

14 Q. And can you just tell the jury what the purpose for you of
15 this part of the presentation was?

16 A. So this is a presentation that we presented -- again,
17 there was different variables of it -- right? -- different
18 versions; but in terms of what we presented to Grouse River,
19 there was three fundamental components. You know, the first
20 one was, you know, outside of establishing who we are as an
21 organization; secondly, the staffing requirements, both on the
22 NetSuite and customer side and making sure we had the right
23 teams in place and setting those expectations.

24 The second one is walking through the methodology in terms
25 of so they really understand sequentially how our shared

1 methodology would work.

2 And then, lastly, you know, there's a slide with specific
3 bullet points that really are identifying the keys to success
4 for any implementation.

5 **Q.** Okay. Why is it important to set expectations about the
6 scope and the implementation process before the parties have
7 entered into any agreements?

8 **A.** I mean, Net/Net it's really -- it's an opportunity for
9 customers to realize what they're getting into. I mean,
10 implementing an ERP system across a company is -- it's a huge
11 undertaking and it's highly complex, and so you want to make
12 sure that the customer has the right team, they also understand
13 the methodology in terms of sequencing and how we're going to
14 implement.

15 They also need to understand that it's a shared
16 responsibility. So, you know, we would actually configure the
17 application with the customer. We would show them how to use
18 it; right? Because when we get them live and go away, NetSuite
19 is not necessarily in the business of always, you know, staying
20 with a customer for years and years and years and
21 continually -- like we want them to be self-sufficient and
22 running their yearly application. So there was a huge amount
23 of investment that a customer had to make to make sure that
24 their end users, their power users, their administrators knew
25 how to use the application. And that was presented and it was

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1 about a 60-40 split. So about 60 percent customer, 40 percent
2 NetSuite, give or take.

3 **Q.** Well, let's look through your slide. Let's look at 102.
4 And can you, you know, just explain to the jury what the slide
5 describes?

6 **A.** So, one, at its highest level does a one-to-one
7 correlation between the NetSuite roles and the client team.
8 Being the sponsor aligns the sponsor, the PM aligns to their
9 PM, consultants align to their administrator, and so on.

10 Obviously we went through who the NetSuite team would be
11 and so on, but I think more importantly we really talked about
12 what was expected from a roles perspective on the client team.

13 **Q.** And so you communicated that these roles would be
14 necessary to fill to Grouse River?

15 **A.** Exactly. So, again -- I mean, in my years of experience,
16 I mean, at this point -- so this is 2013 -- I had already been
17 delivering NetSuite for five years from small businesses to
18 large enterprises, and it's very straightforward that they have
19 to have specific roles and involvement, including sponsor,
20 administrator, project manager, and project team to be
21 successful.

22 **Q.** Let's look at the next slide, 103.

23 Can you explain what this slide describes for the --

24 **A.** So without doing my actual presentation of this, because
25 it would bore everybody, but this sequentially goes through

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1 step by step and stage by stage how we're going to implement
2 the product. Starting to initiate, where we go into analyze,
3 do the design, through the requirements document. We configure
4 the application with the customer. We then develop training
5 plans.

6 And, then, keep in mind all the way through the bottom
7 there's data migration where we're working on data migration at
8 the same time. Then we validate the system with the customer.
9 Then we deploy Go-Live and then we support them for a period of
10 time.

11 **Q.** So I won't make you do your whole presentation for the
12 jury.

13 **A.** All right. That was close enough.

14 **Q.** But I will ask you, did you go through each of these boxes
15 with Grouse River at the meeting?

16 **A.** So I spent the majority of my time on this slide.

17 **Q.** Okay. And can I ask you just under "Analyze," can you tie
18 that to the process that we've been describing today? What
19 does that match up to?

20 **A.** So the analyze phase is where, you know, we send them the
21 business process mapping questionnaires. We go on-site. We do
22 deep dive. We learn to understand their business. We write
23 the business requirements document, which captures how do they
24 do it today, what's their future state, and then any gaps that
25 have been realized based on, you know, in-scope functionality.

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1 Q. Right. I see you identify business process gaps here.

2 Did you describe to Grouse River at that time what that meant?

3 A. Yes. They had -- they knew what it was.

4 Q. Okay. And did you find that Mr. Fallis was pretty well
5 versed in this process?

6 A. I had no reason not to believe so.

7 Q. Were you aware that he had sold business software for six
8 years?

9 A. I did know that, yes.

10 Q. Were you aware that he had sold business implementation
11 services for business software for that time period?

12 A. I did not know that, but now I do.

13 Q. You learn something every day.

14 Okay. What happens after the analyze stage?

15 A. So that's where -- so analyze and design are really
16 combined together -- right? -- where we're analyzing and
17 designing a solution. The BRD, the business requirements
18 document, is a blueprint. It's as simple as "This is how we're
19 going to configure the application and move forward."

20 So we then move into the configuration phase where we work
21 with the system administrator who, as I mentioned in the
22 previous slide -- and, again, we tell all the customers this,
23 that they need someone who is technically savvy, who knows the
24 business, has been there for a long time, and can configure the
25 application with the NetSuite consultant to make sure we're

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1 actually setting up the application correctly.

2 Q. So do the configure and validate phases line up to
3 implementation?

4 A. Sorry?

5 Q. Do the configure and validate phases over here on the
6 slide, does that kind of line up to implementation?

7 A. Yes.

8 Q. Now, there's a little discussion between you and
9 Mr. Susman about the term "native." I know you're not super
10 fond of that phrase, but do you know how it's used in the
11 business software industry generally?

12 A. Yeah. It means that it's included in the core product.

13 Q. Okay. Based on your familiarity with how that term is
14 used, does the term "native" mean that no further configuration
15 or customization is necessary?

16 A. No. So especially not in -- I mean, that's the power of
17 NetSuite. I don't know how else to say it. I mean, it's an
18 application that is customizable. So even though you may have
19 something that's included, you know, as out-of-the-box
20 functionality, you know, you still have the ability to
21 customize forms, you can create fields.

22 And this is all stuff that the function -- you know, like
23 in an on-premise solution, which is where you have all
24 hardware, you know, you need developers and it's highly
25 technical and highly -- but, you know, in NetSuite, you know,

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1 Salesforce for that matter, but NetSuite, the functional
2 consultants can configure the application.

3 So, yeah, I mean, just because it's in scope and it's
4 native, you know, for lack of a better term, doesn't mean that
5 it doesn't require additional customization and configuration
6 to make it work.

7 **Q.** I see here under validate that it says "Prepare test plan
8 and execute tests." Who was responsible for testing the
9 NetSuite software before it goes live?

10 **A.** The customer was.

11 **Q.** And did you describe that to Grouse River at this
12 presentation?

13 **A.** Yes.

14 **Q.** And were they aware of that?

15 **A.** Yes.

16 **Q.** And what about training? Whose responsibility is it to
17 ensure that the proper training is done?

18 **A.** I mean, at the end of the day, NetSuite does own the
19 training curriculum, but it is the responsibility of the
20 customer to make sure that they have the right users involved,
21 they have the right -- you know, who do they want to have
22 trained, what do they want them to be trained on. So NetSuite
23 kind of does more of the heavy lifting on the training side of
24 it.

25 **Q.** Okay. And the term "Go-Live" is on here and the jury has

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1 heard this, but can you just explain what "Go-Live" means?

2 **A.** Yes. The official definition of "Go-Live" is the customer
3 is transacting in the NetSuite application.

4 **Q.** And then does the professional services have a role to
5 play after the customer goes live?

6 **A.** They do. So within our contracts, you know, it varies by
7 customer, we support them, you know, three, four weeks.
8 Generally it's through first month-end close where they close
9 their financials for the first time in NetSuite.

10 **Q.** And at that point is the account transferred over to
11 another entity at NetSuite?

12 **A.** So we do have optimization teams. Yeah, sure. I mean, at
13 that time generally it was consultants within our retail
14 vertical that supported customers ongoing where today they have
15 entire teams for that now.

16 **Q.** Now, when you discussed this slide with Grouse River, did
17 you commit to Grouse River that its implementation would be
18 accomplished within a certain time period?

19 **A.** So there was no guarantee. I mean, at that -- the
20 presentation was made and, you know, this was actually said to
21 all of our prospects, that the average installation time for
22 NetSuite ERP and CRM was 120 days; but with the inclusion of
23 point of sale and eCommerce, it's way beyond that.

24 So -- but by no means in my presentation or in anywhere
25 that I've seen did we provide a guarantee as to when we could

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1 get them live.

2 **Q.** All right. Let's turn to page 106 of your presentation,
3 which I think is the last page.

4 Can you tell the jury what this describes?

5 **A.** Yeah. So outside of the methodology -- I mean, every
6 slide in my presentation was important, but this one is very
7 important because it bullet points our recommendation to
8 exactly how they should execute on the project to be
9 successful.

10 **Q.** Okay. We'll discuss this in more detail, but can you just
11 kind of give the jury a quick rundown of what these bullet
12 points are?

13 **A.** So "Active participation from executive sponsors," that's
14 simple. You know, Glenn is available and whomever the
15 executive sponsor is for that matter.

16 "Nominate and develop an administrator." So, like I said,
17 it's someone that knows the business, they're technically
18 savvy, you know, because they're with the consultants
19 configuring the application.

20 Prioritize requirements is very important because if you
21 try to do everything all at once, sometimes it's really hard to
22 get live. That's where you have projects that go on forever
23 because your customer -- you know, a customer that prioritizes
24 and phases and incrementally takes things live is far more
25 successful than a customer that takes everything live at the

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1 same time.

2 And that's the next bullet point, "Start small and enhance
3 over time"; right? So in this situation, take the ERP live.
4 Take the point of sale live. Take the eCommerce live. So
5 that was definitely discussed.

6 Q. So let me ask you. You made that recommendation to
7 Grouse River?

8 A. Yes.

9 Q. Did they choose to follow that advice?

10 A. Everything had to go live all at once.

11 Q. Okay. And the number five on your slide?

12 A. So "Involve end users early and often." So the sooner
13 that they can get users involved in the application to see how
14 it's been configured, involved in the process, walk-throughs --
15 you know, walking through the application, testing the
16 application, the better off you're going to be because if you
17 go live with a bunch of users that have never even seen the
18 application, it's not going to be a successful Go-Live and then
19 that's where you uncover all these new issues because they've
20 never seen the application.

21 Q. What about the last one?

22 A. So "Tightly manage the scope and change control," bottom
23 line, you know, in all reasonableness -- right? -- like, try to
24 Go-Live with what you originally agreed to with what's in scope
25 in the contract. Don't continually add to scope.

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1 Q. Okay. Now, I want to quickly talk about some of the other
2 parts of the November 2013 meeting in Kelowna.

3 Are you aware that before you joined the meeting by phone,
4 that there was some demonstratives of some functionality?

5 A. Can you describe "demonstratives"?

6 Q. That the team that had traveled to Kelowna actually did
7 some demos of some of the NetSuite offerings.

8 A. Correct, yes.

9 Q. And Mr. Fallis testified that NetSuite demonstrated
10 responsive web design. What is responsive web design?

11 A. Yeah. So that's the ability for a website to be
12 displayed -- you know, be displayed on multiple devices, such
13 as like an iPad, a phone, or a computer. So basically it's
14 saying that regardless of what device you use -- you know,
15 bring the site up on, it's functional with that specific
16 device.

17 Q. And could NetSuite provide that functionality in November
18 of 2013?

19 A. Yes.

20 Q. And Mr. Fallis also testified that NetSuite demoed
21 advanced inventory reporting. What does that refer to?

22 A. Yeah. So that's -- so your inventory reporting is as good
23 as your data in the system; but besides that caveat, it's just
24 standard inventory reports and searches and capabilities within
25 NetSuite application to report, you know, what your inventory

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1 status is.

2 Q. And in November 2013, did NetSuite have the ability to do
3 advanced inventory reporting?

4 A. Yes.

5 Q. And Mr. Fallis also testified that NetSuite demoed
6 advanced marketing. What does "advanced marketing" mean?

7 A. So "advanced marketing" and the terms of marketing within
8 NetSuite ERP and CRM is being able to send out promos,
9 discounts, e-mail campaigns, based on the purchase history of a
10 customer.

11 Q. And in November 2013, could they send e-mails based on a
12 customer's purchase history?

13 A. Yes.

14 Q. Now, you were not -- I think you testified earlier, you
15 were not on the phone during the other portions of the day;
16 correct?

17 A. I was not, no.

18 Q. Okay. But you are familiar with the capabilities in
19 NetSuite's software in 2013; correct?

20 A. Yes.

21 Q. Okay. Can we look at page 81 of the slide presentation?

22 A. (Witness examines document.)

23 Q. Can you tell the jury what an upgrade is?

24 A. So NetSuite does two ERPs here on upgrades per year, one's
25 in the spring and one's in the fall, and everybody, regardless,

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1 takes the upgrade. So everybody on NetSuite is always on the
2 same version.

3 Q. Okay. Does this slide contain any inaccurate information?

4 A. It does not.

5 Q. And then can we please turn to page 90.

6 Do you see the statement "Websites average response time
7 .45 seconds"?

8 A. I do, yes.

9 Q. And what does response time mean?

10 A. So that's the amount of time that it takes for a Web page
11 to load.

12 Q. Okay. Is that specific to NetSuite's server?

13 A. No. I mean, it's not. There's a lot of variables that
14 goes into response time, such as, you know, in terms of the
15 end-user consumer, you know, what computer you're on, your
16 Internet bandwidth, et cetera. So there's a lot of variables.

17 Q. Okay. So as far as you know, in November 2013, did
18 NetSuite offer an average response time of less than .45
19 seconds?

20 A. I mean, that's the average response time that was being
21 quoted at that time.

22 Q. Okay. And did NetSuite ever guarantee to any specific
23 customer that their website will achieve a particular response
24 time or speed?

25 A. No, because there's no way to guarantee it.

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1 Q. Now, you can take that down, John. Thank you.

2 Now, Mr. Fallis testified earlier that Grouse River had
3 issues using credit cards after going live on NetSuite. Are
4 you aware of that?

5 A. Yes.

6 Q. Okay. Had NetSuite implemented chip and pin credit cards
7 for other customers in Canada before Grouse River?

8 A. Yes.

9 Q. And do you know what payment processor those customers
10 were using?

11 A. I believe it was Mercury.

12 Q. Okay. So Grouse River was not the first customer to use
13 Mercury for its payment processing and chip and pin credit
14 cards in Canada?

15 A. No.

16 Q. What about YesPay? Did NetSuite have any customers in
17 Canada using YesPay in Canada at the time?

18 A. We did not. It was not certified at the time.

19 Q. Okay. And did you ever discuss with Mr. Fallis that
20 Grouse River would be an early adopter on NetSuite's software?

21 A. No. So there was a conversation -- I mean, there was a
22 multitude of conversations, but the one I really remember is in
23 March, Glenn was on the phone, Cole, Gary Specter, and myself
24 and it was really just kind of that final call where, you know,
25 Glenn -- you know, in order to move the deal forward and -- you

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1 know, I think at that time both parties were very excited
2 about, you know, having Grouse River be an early adopter for
3 omni-channel solution in Canada, and Glenn was very aware that
4 he was an early adopter and that was explained to him, yes.

5 **Q.** Okay. Was there any advantage to Mr. Fallis to be an
6 early adopter?

7 **A.** Yeah. I mean, being that I'm so close to the product, I
8 would say the primary reason you'd want to be an early adopter
9 is that you can be part of the Customer Advisory Board, which
10 Grouse River was and Glenn was, where you can have direct
11 feedback and you can really play a role in terms of the product
12 road map.

13 So NetSuite really made an investment in terms of
14 Grouse River, you know, being on the Customer Advisory Board,
15 having a direct say in terms of the direction of the product.

16 The secondary is it also resulted in a really hefty
17 discount that Grouse River received, you know, for the deal.
18 It was, you know -- I think ultimately we ended up at a
19 90 percent discount for all services and licensing, which at
20 that time was a tad unheard of, but it's also -- and I just
21 remember the exact -- there were very -- like, everyone was
22 super excited about bringing on Canada as an omni-channel
23 customer and Grouse River, otherwise we would never have agreed
24 to that.

25 **Q.** Would it have made sense to offer such a steep discount

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1 for a customer that you didn't intend to support?

2 A. No.

3 Q. Let's be clear, Grouse River wasn't NetSuite's first
4 omni-channel customer at all; right?

5 A. Absolutely not.

6 Q. Okay. You had experience with omni-channel customers?

7 A. Correct.

8 Q. So you mentioned a minute ago that there were many
9 conversations. Now, it's true that you've never met Mr. Fallis
10 in person; correct?

11 A. That's correct.

12 Q. Okay. But you have -- have you spoken to him on the phone
13 more than a few times?

14 A. Yes.

15 Q. Many times?

16 A. Many times I would say, yes.

17 Q. Okay. And is it typical to have customers that you don't
18 meet in person?

19 A. So, absolutely. I mean, in a cloud-based world, I mean,
20 NetSuite and Salesforce -- right? -- it's a transformation from
21 on premise to the cloud, and so you're going to have a lot of
22 customers that you don't meet. And even today, we don't even
23 offer on-site services unless it's requested by the customer.
24 Like, everyone's gone to such a remote model and even back then
25 we started to make that transition.

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1 So for us -- you know, for myself specifically -- I mean,
2 the consultant team met him. I mean, people met him. Like, we
3 went out there, the sales team met him. It just so happened I
4 did not meet him, but that's not to say I wasn't less involved
5 in the project when I was engaged.

6 **Q.** Did you have any other conversations with anyone else from
7 Grouse River during the sales process that we haven't talked
8 about?

9 **A.** I mean, so when we did have conversations with Glenn, I
10 know that, you know, Troy and maybe a few others were on the
11 phone, but I can't recall specifically.

12 **Q.** Okay. And during your conversations with Grouse River,
13 did anyone provide you with a list of Grouse River's detailed
14 business requirements?

15 **A.** So the list that we did receive was very high level, very
16 high -- you know, high-level strategy in terms of what they
17 were looking for, but by no means was it at the requirement
18 level that we captured when we went on-site.

19 **Q.** Okay. During any of your conversations with Grouse River,
20 did you ever hear anyone from NetSuite tell Grouse River that
21 NetSuite could and would meet all Grouse River's requirements?

22 **A.** No.

23 **Q.** Is that something that you would say?

24 **A.** No.

25 **Q.** Why not?

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1 **A.** Because it gets you into a lot of trouble.

2 **Q.** One of the allegations in this case is that sometime in
3 late February and early March someone told Grouse River that
4 NetSuite could and would meet their business requirements.

5 What was happening in late February and early March?

6 **A.** So that's where -- I recollect that's where the statement
7 of work and the Software Services Agreement was being
8 negotiated.

9 **Q.** Okay. So at that point you were creating a document that
10 laid out what you could and would do for them; right?

11 **A.** Right. We had created it and then we were going through
12 the negotiation cycle both as it pertained to assumptions
13 within the SSA as well as the price.

14 **Q.** And, again, you testified you had a conversation with
15 Mr. Fallis to walk through that statement of work; correct?

16 **A.** That's right.

17 **Q.** Had you worked with Cole Waldron on other potential
18 opportunities around this time period?

19 **A.** I had, yes.

20 **Q.** Are you aware of any misrepresentations that Mr. Waldron
21 made to Grouse River?

22 **A.** No.

23 **Q.** Had you worked with Mr. Specter on other potential
24 opportunities?

25 **A.** Yes, many.

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1 Q. And are you aware of any misrepresentations that
2 Mr. Specter made to Grouse River?

3 A. No.

4 Q. Did you ever hear anyone from NetSuite make any
5 misrepresentation to Grouse River?

6 A. I did not, no.

7 Q. Do you know how NetSuite's sales representatives are
8 compensated?

9 A. Yeah. So it's based on the licensing fee. Generally the
10 first year licensing amount.

11 Q. And what happens to their commission if the license fees
12 are discounted?

13 A. They make less commission.

14 Q. What happens to the sales representative's commission if
15 the implementation doesn't go well and the customer doesn't end
16 up paying?

17 A. So NetSuite, probably like any other software, they have a
18 clawback concept. So if the rep gets paid and then the
19 customer decides -- you know, they make their commission and
20 the customer decides not to pay, then the commission -- you
21 know, the rep has to pay that money back.

22 Q. So is there a risk to a sales representative if customers
23 are unhappy?

24 A. Absolutely.

25 Q. What was your impression of Grouse River during the sales

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1 process? Did you think that they were a successful retailer?

2 A. I did, yes.

3 Q. Did you believe at the time that Grouse River was a
4 profitable business?

5 A. I did. I had no reason to believe otherwise.

6 Q. So I believe you testified with Mr. Susman that the
7 parties first exchanged drafts of the statement of work in
8 January 2014; is that correct?

9 A. Right.

10 Q. And when did the parties actually sign the contracts?

11 A. In the last part of March 2014.

12 Q. Is it normal for the contract negotiation process to take
13 two months?

14 A. I would say that's generally about a month longer than
15 normal.

16 Q. Why was the negotiation process a little bit longer with
17 Grouse River?

18 A. So, again, it was twofold. There was a lot of, I believe,
19 Grouse River, Glenn, had brought in a lawyer to do redlines of
20 the contracts, which, frankly, is not unusual -- right? -- just
21 to make sure that the terms and conditions align, but there was
22 definitely some back and forth on that.

23 And then specifically around the price; right? To get
24 down to a 90 percent discount, regardless of how much NetSuite
25 wanted to invest, that's a really steep discount that requires

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1 a lot of approval so that would elongate the process.

2 **Q.** Can we look at -- I want to talk about those contracts.

3 There were two.

4 Can we look at the Subscription Services Agreement, which
5 is Trial Exhibit 2 in your binder?

6 Can you just describe to the jury at a high level what the
7 parties are agreeing to in the Subscription Services Agreement?

8 **A.** Yeah. So this document is outside the statement of work
9 and at its simplest form is the terms and conditions as it
10 applies to, you know, the software licensing as well as
11 professional services.

12 **Q.** Okay. And does the Subscription Services Agreement refer
13 to the statement of work?

14 **A.** It does, yes.

15 **Q.** Okay. And then that's a separate document. Can we look
16 at TX3?

17 And can you just describe at a high level what the parties
18 are agreeing to in the statement of work?

19 **A.** Yep. So it's really threefold. The first being that it
20 walks through the methodology again so the customer understands
21 how we're going to deliver. So that's, you know, highlighted
22 on page 4.

23 And then we go into the functional scope detail of
24 NetSuite ERP, point of sale, and eCommerce; and then,
25 finally, you know, it touches on training as well as data

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1 migration.

2 And then the third component is it walks through another
3 set of assumptions in terms of how the project is going to be
4 delivered.

5 Q. Okay. Now, we already covered a little bit because when
6 we talked about this serialized inventory, we covered some of
7 the scope discussion, but can you -- why don't we let the jury
8 know about other examples of something that's not in scope.
9 Can you look at Section 2.2.3 on page 10?

10 A. (Witness examines document.) Yeah.

11 Q. So does this indicate functionalities that are in and out
12 of scope?

13 A. It does, yes.

14 Q. Can you give a couple examples? For example, what does
15 import services refer to?

16 A. Yeah. I mean, I'm just looking at this one second.

17 Q. Uh-huh.

18 A. (Witness examines document.) For this project, the
19 biggest one would have been import services versus data
20 consulting. So data consulting was in scope where we provided
21 a bucket of hours to consult them on how to import the data,
22 and import services is where we would actually do the import
23 for them.

24 Q. Okay. And Grouse River in this instance chose not to have
25 import services be in scope?

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1 **A.** Correct. They chose a bucket of hours.

2 **Q.** Did that save them some money?

3 **A.** In the short term it did.

4 **Q.** Fair enough.

5 Web design, was that in scope or out of scope for
6 Grouse River?

7 **A.** It looks like that was out of scope.

8 **Q.** Okay. And so just so the jury is clear, if after the
9 statement of work was signed Grouse River changed its mind and
10 decided it wanted data migration services to be provided by
11 NetSuite, would that have required a change order?

12 **A.** It would, yes.

13 **Q.** Would that have been a gap?

14 **A.** It would have, yes.

15 **Q.** Okay. And did Grouse River have input into what was
16 defined as in scope and out of scope?

17 **A.** Absolutely.

18 **Q.** So could Grouse River have decided to include some of
19 these things that are out of scope in scope if it wanted to pay
20 for them?

21 **A.** No question.

22 **Q.** Are any two statements of work the same?

23 **A.** No, because with each deal, we go through a different
24 scoping process. So, you know, is any two snowflakes the same?
25 Probably not; right?

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1 Q. Okay. And the idea that the implementation is a shared
2 project, as you discussed earlier, is that reflected anywhere
3 in the statement of work?

4 A. I believe it is, yes.

5 Q. Can we look at Section 3, page 23, John?

6 A. All right. So, again, this is walking through the shared
7 implementation methodology and really it's just reemphasizing
8 what I went through during the sales presentation about having
9 the right roles -- you know, right people, right resources in
10 place to be successful.

11 Q. So you actually put this in the statement of work that the
12 customer has to sign; correct?

13 A. Right.

14 Q. All right. Now, you also said earlier that the statement
15 of work includes some project assumptions. Are there any
16 assumptions that relate to the customer staffing of the
17 project?

18 And, John, I'll ask you to put up page 27.

19 A. So it looks like it's 4d). There's two simple
20 assumptions. One, you know, make sure your resources are
21 available and they understand the time commitment, which is
22 what we would have walked through during the methodology
23 walk-through; and then the administrator, which is the system
24 administrator, which is critical in terms of configuring the
25 application with NetSuite.

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1 Q. Okay. And just looking at the last page of the statement
2 of work, did you sign the statement of work on behalf of
3 Grouse River?

4 A. I did, yes.

5 Q. And that was on March 29th, 2014?

6 A. Yes.

7 Q. And, again, in this document is there any -- or in this --
8 either one for that matter, the Subscription Services Agreement
9 or the statement of work, did NetSuite commit to any time frame
10 for the implementation?

11 A. No.

12 Q. Did NetSuite commit to a specific Go-Live date?

13 A. No, we did not.

14 Q. Did NetSuite commit Grouse River's website would achieve a
15 certain specific speed?

16 A. We did not, no.

17 Q. Are you familiar with the contracts that NetSuite signed
18 with third parties in March of 2014?

19 A. Yeah. So there's a huge partner community within the
20 NetSuite world that allows customers to use partners for
21 third-party solutions that we don't offer with out-of-the-box
22 functionality.

23 There was two specifically that they went into agreement
24 with. The first one was OzLINK, which allowed them to use RF
25 scanning capabilities in the warehouse, like the scan guns.

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1 And then the second one was Pacejet, which provided
2 third-party shipping solutions. So NetSuite integrates the
3 third-party shipping carriers like UPS, FedEx, et cetera, but
4 Pacejet would allow them to integrate with Canada -- you know,
5 Canada Post and, you know, other carriers.

6 **Q.** Now, was NetSuite a party to those contracts between
7 Pacejet and Grouse River or OzLINK and Grouse River?

8 **A.** No. So the way it works is that the customers sign a
9 separate contract with those customers and NetSuite is not a
10 party.

11 **Q.** Okay. So we talked about the business mapping process a
12 little bit. You mentioned the business mapping questionnaires
13 that are sent the beginning of the project -- or that phase of
14 the project.

15 Usually have a party signs a statement of work, how
16 quickly does NetSuite get started with the implementation and
17 business mapping process?

18 **A.** Yeah. So it was 10 days to where we'd get it staffed and
19 reach out to the customer and kick it off, 10 business days.

20 **Q.** Is that what happened in this case?

21 **A.** I believe so. I don't know. I mean, I believe so, yes.

22 **Q.** Okay. And then was there a delay getting the project
23 actually -- the kickoff actually on --

24 **A.** So the kickoff was dependent on Grouse River having the
25 staff in place to start it, and so we were not able to kick it

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1 off until May.

2 Q. Okay. And who did Grouse River hire to fill that role
3 that they needed to fill?

4 A. So they hired -- so I'd gone through the specific roles,
5 like sponsor, project manager, administrator, and they hired
6 one person, Kevin Rost, to be both the project manager and the
7 system administrator.

8 Q. Is that unusual?

9 A. For a project of this complexity and size, it's not the
10 recommended approach by any means.

11 Q. As far as you know, did Mr. Rost have any prior experience
12 using NetSuite software?

13 A. He did not, no.

14 Q. As far as you're aware, did Grouse River hire any other
15 employees to assist with the implementation besides Kevin Rost?

16 A. I don't believe so, no.

17 Q. How long does it usually take to draft a business
18 requirements documents after a project gets going?

19 A. Yeah. So to go on-site, gather the requirements, write
20 the BRD, go through some revision cycles, generally takes six
21 weeks --

22 Q. How long did --

23 A. -- on average.

24 Q. -- it take for Grouse River?

25 A. So we went on-site I think in the latter part of May and

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1 we didn't have a signed BRD until close to middle of September
2 of that year.

3 Q. And can you tell the jury why it took so long?

4 A. Yeah. So by far, the number one contributing factor was
5 the amount of time that the team was having to spend on change
6 orders and the serialized solution.

7 So what customers may or may not realize is that you're
8 asking for additional functionality, but who's going to do
9 that; right? And so it's the consultants that are having to
10 spend time, you know, outside of what we're already doing on
11 the project, you know, to actually build the change order and
12 build the solution and so ultimately that elongates it.

13 But regardless, I'm pretty confident that Glenn would not
14 sign the statement of work until we had a working serialized
15 solution -- or, excuse me -- sign the BRD until we had a
16 working serialized solution.

17 Q. And once you had a working serialized solution, did he
18 sign the BRD?

19 A. He did, yes.

20 Q. Now, you have worked with David Mason-Jocksch before;
21 right?

22 A. I have, yes.

23 Q. How much have you worked with him before?

24 A. A lot. He and I had actually worked -- you know, while I
25 was at NetSuite, you know, at that time, he was actually the

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1 system administrator at a large enterprise customer out of
2 St. Louis.

3 Q. Is he a good project manager?

4 A. He's -- outside of his e-mails, which get a little carried
5 away. In terms of his level of detail on capturing notes and
6 customer advocacy, I'd say he's one of the best PMs I've ever
7 worked with.

8 Q. And did he stay on this project for its entire time
9 period?

10 A. He did, yes.

11 Q. Now, you mentioned earlier that it took Grouse River a
12 long time to get back to NetSuite with regards to the change
13 orders for the serialization because Mr. Fallis was on a
14 hunting trip. Was that your testimony?

15 A. Yes.

16 Q. Are you aware of other hunting trips Mr. Fallis went on
17 during the implementation process?

18 A. Yes. There was a period of about four to five hunting
19 trips that he went on between the time that the statement --
20 you know, the statement of work was signed through September.

21 Q. And why did it matter that Mr. Fallis was gone?

22 A. So, you know, obviously he was the executive sponsor, but
23 his employees were not able to make any decisions. So every
24 time we talked to Kevin or Troy or whomever about decisions
25 that had to be made in terms of the configuration of the

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1 application, Glenn was away and they had to wait for him to
2 return.

3 **MS. RAY:** Is TX148 in evidence?

4 (Pause in proceedings.)

5 **MS. RAY:** Why don't we look at TX148.

6 I'm just trying to get things wrapped up, Your Honor, so I
7 don't --

8 **THE COURT:** Okay.

9 **BY MS. RAY:**

10 **Q.** Does this document between -- this e-mail between you and
11 Mr. Specter, does that reflect what you were just talking about
12 with regard to Mr. Fallis being absent from the project?

13 **A.** Yeah. So this -- so I reached out to Gary and I've
14 already explained why I did so, but what we were trying to do
15 is mobilize.

16 One of the requests is that his end users hadn't been
17 involved so they didn't know how to test the system, and so we
18 put together a training curriculum to test the end users -- or,
19 excuse me -- to train the end users to test the application,
20 and we had mobilized and got it together but Glenn was gone and
21 Kevin Rost for some reason was not able to somehow mobilize his
22 team to get them trained.

23 And so that was very frustrating because we spent an
24 exorbitant amount of cycles pulling in training, putting
25 together the level of effort that it would take, that we were

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1 absorbing anyway, and ultimately we couldn't execute on it
2 because no one could make a decision on how their users were
3 going to be trained.

4 **Q.** Did Grouse River ever take the training for its users that
5 you were talking about in this e-mail?

6 **A.** I don't -- I don't believe so, no.

7 **Q.** And Mr. Specter in that first e-mail there responds to you
8 and he says, "I will send him a note." Did you understand that
9 Mr. Specter contacted Mr. Fallis?

10 **A.** I have no reason to think that he did not reach out.

11 **Q.** Okay. In your view, did Grouse River have adequate
12 resources in place for a successful implementation?

13 **A.** Not by any means. So Kevin Rost was probably one of the
14 least technical people that should have been in the role of
15 system administrator. I mean, the amount of time and
16 handholding it took just to show him how to use a computer
17 application was just beyond. It was exorbitant.

18 So, you know, Kevin wasn't the right guy. And actually I
19 think it was in early August when we were going back and forth
20 in data migration, I reached out to Glenn, you know, advising
21 that Kevin Rost just wasn't the right person; and I was
22 informed at that time that, you know, Glenn didn't have the
23 resources or capabilities to bring on anybody else and that,
24 you know, would NetSuite mind doing the heavy lifting. So --

25 **Q.** What do you mean when you said Mr. Fallis said he didn't

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1 have the resources? What did he tell you about that?

2 **A.** So -- I mean, I really took that as he really didn't have
3 financial means to bring on additional people and pay
4 additional people to take on those roles. It's only
5 substantiated by, you know, his decision to use one person to
6 be a project manager and system administrator, and the guy was
7 incapable of handling either role. Specifically system
8 administrator. I mean, can you deal with a bad project
9 manager? Probably. You chug along. But if you have someone
10 that's in the system that doesn't know how to use applications,
11 it's very problematic.

12 **Q.** When you spoke to Mr. Fallis in that conversation in the
13 summer of 2014 to convey your concerns about Mr. Rost, did you
14 get an understanding from Mr. Fallis as to whether he believed
15 he had adequately staffed the project?

16 **A.** It was my understanding through that conversation that
17 Glenn knew that Kevin was the best that we were going to have
18 at that time.

19 **Q.** And did you understand whether Glenn knew whether he was
20 adequate to the task?

21 **A.** I can't answer for Mr. Fallis on that. I mean, the
22 Net/Net is that we had a conversation that he didn't have the
23 right people in place and that we were not going to find the
24 right people to do so.

25 **Q.** Okay. Now, we talked about how the BRD took longer than

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1 normal to execute, but you did, in fact, sign one in September
2 of 2014; correct?

3 **A.** We did, yes.

4 **Q.** Okay. And let's look at Trial Exhibit 7. And just very
5 briefly if you can just explain to the jury what the business
6 requirements document purpose is.

7 **A.** Right. So, again, it's to functionally go through their
8 requirements at a detailed level as well as identify future
9 process and design, and then finally it follows up with, you
10 know, any gaps that may be related to the in-scope, you know,
11 functionality of the statement of work.

12 **Q.** And can the implementation process start without a
13 business requirements document?

14 **A.** So it can. So being that we were being so tied up on
15 change orders, I made the executive decision to start
16 configuration of the application without a signed BRD, which
17 it's not any added risk. It just means that we're trying to
18 keep the project moving along, but it's highly discouraged;
19 right? Because you don't have agreed-to -- you don't have a
20 final agreed-to document.

21 But being that the project -- you know, Grouse River
22 wanted to go live in October, but how can we go live in October
23 if I don't authorize my team to start configuring the
24 application? So while we were going back and forth on the
25 change orders and additional gaps in functionality in that BRD,

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1 I authorized my team to configure the application. So by the
2 time the BRD was signed, we were 90 percent done with
3 configuration of the application.

4 **Q.** How long is the business requirements document that
5 Grouse River and NetSuite signed?

6 **A.** I believe over 100 pages.

7 **Q.** And let's look at page 97.

8 **A.** (Witness examines document.)

9 **Q.** We've seen this before. Does this lay out that
10 Grouse River is responsible for data migration?

11 **A.** It does. So in Section 16.2 it says the responsibility of
12 data migration solely rests on Grouse River Outfitters and that
13 NetSuite professional services will provide 10 hours of
14 assistance on how to import records.

15 **Q.** Okay. And is data migration important to the success of
16 an implementation?

17 **A.** Yeah. So outside integrating a third-party system's data
18 migration is by far the most important aspect of an
19 implementation.

20 **Q.** Okay. And if data is not migrated correctly, could it
21 affect the accuracy of the data in the application?

22 **A.** It can affect all aspects, including performance.

23 **Q.** Okay. And we looked -- Mr. Susman wanted you to look at
24 the section entitled "Gaps" in the BRD at page 99. He
25 indicated that there was something nefarious about it being at

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1 the back of the document. Is this typical to include this
2 section at the back of this document?

3 **A.** The section -- the gap analysis was always at the back of
4 a business requirements document.

5 **Q.** And the gap analysis, as we discussed, is discussing
6 add-ons, new functionality or things that might -- the customer
7 might decide to add; correct?

8 **A.** I guess to put it more realistically, a gap is additional
9 functionality or processes that a customer wants that is
10 outside the scope of what they originally signed.

11 **Q.** Okay. And can you turn to page 108? Did both parties
12 agree and sign off on the business requirements document after
13 negotiating it, putting it in writing, and reviewing it?

14 **A.** They did, yes.

15 **Q.** So when you saw earlier some statements that Mr. Susman
16 represented to you were made by people at NetSuite without
17 telling you always exactly when or who, one of the things he
18 said -- I think he did point you to a statement by
19 Mr. Mason-Jocksch. He said, "Sales really screwed us all when
20 they sold POS." Do you remember that?

21 **A.** Uh-huh.

22 **Q.** And can you tell us whether you agree with David that
23 sales screwed NetSuite when it sold this solution?

24 **A.** I mean, again, you have to take David's e-mails with a
25 grain of salt sometimes, and I do not agree. I mean, what he

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1 said in there -- I mean, David wasn't -- Dave was not part of
2 the sales cycle. He got emotional within that e-mail.

3 He knew what the solution was so for him to even put that
4 in an e-mail just means he's trying to aggravate people and
5 move things along. That was his way. So, I mean, obviously I
6 don't agree with it at all because that's not what happened.

7 **Q.** And was chip and pin credit card processing a known gap at
8 the time you sold the solution?

9 Sorry. Let me be more specific.

10 Was chip and pin credit card processing in Canada a known
11 gap to NetSuite at the time you sold the solution to
12 Grouse River?

13 **A.** It was not a known gap because we had it working.

14 **Q.** All right. You talked a little bit about the security
15 lockdown with respect to the NetSuite point of sale. Did that
16 relate in any way to the rest of the solution, the ERP and the
17 eCommerce?

18 **A.** No.

19 **Q.** So could you still continue to configure and build out
20 those parts of the solution while there was a lockdown on
21 security?

22 **A.** There was no dependence on our eCommerce and NetSuite
23 ERP as it applied to the point of sale lockdown.

24 **Q.** And were you, in fact, also able to work on the NetSuite
25 point-of-sale solution even though the security issues were

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1 preventing some testing?

2 **A.** No. There was still work that we could do. It just
3 wasn't at its optimal level.

4 **Q.** Okay. So for the statements that Mr. Susman read to you
5 that occurred after the statement of work and, in fact, after
6 the BRD was signed, were you aware of anyone, to the extent he
7 identified who said them, who made those statements who were
8 involved in the sales process?

9 **A.** No. So Subu, you know, Dave, Karen, none of those
10 individuals were involved during the sales cycle.

11 **Q.** And in 2014, when Karen Messick said something about how
12 gift cards -- that Grouse River can't use gift cards until the
13 issue is fixed, when did Grouse River actually Go-Live on the
14 NetSuite solution?

15 **A.** It was in, I believe, March or April of 2015.

16 **Q.** So was there adequate time to fix that issue?

17 **A.** Absolutely. Because that happened early in 2014 so -- or
18 not -- I mean, fall of 2014 so it was merely just the
19 development life cycle of us building, you know, what they
20 needed and making it work. So...

21 **Q.** And when you were asked about your e-mail where you said
22 "I would go to another site if the search functioning was
23 working like this," you stated that the customer should have
24 tested. Can you explain a little bit more to the jury about
25 whose responsibility it was before Go-Live to test and make

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1 sure that the system was working before they turned it on?

2 **A.** Yeah. So it's Grouse River's responsibility. And in
3 subsequent conversations with Dave, you know, in the latter
4 part of the project and throughout, Dave was convinced that not
5 a single portion of the application was tested prior to
6 Go-Live.

7 **Q.** And did you form a view about whether that had anything --

8 **MR. SUSMAN:** Your Honor --

9 **THE COURT:** Mr. Susman is standing up. Yes?

10 **MR. SUSMAN:** I move to strike that.

11 **THE COURT:** Yeah.

12 **MR. SUSMAN:** It's totally hearsay.

13 **THE COURT:** Yes. Objection sustained. The jury is
14 instructed -- on the grounds that it's hearsay. The jury is
15 instructed to disregard the answer.

16 **MS. RAY:** Okay.

17 **Q.** Based on your experience being the project sponsor for
18 this project, did you form a view about whether Grouse River
19 had adequately tested its solution before it went live?

20 **A.** So based on the number of issues that we encountered, you
21 know, which included enhancements and process fixes and
22 functional fixes and so on, that was indicative of a system
23 that had not been properly tested.

24 **Q.** Okay. And did you form a view about whether
25 Grouse River's failure to adequately staff its internal project

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1 had any effect on its inability to properly test?

2 **A.** I mean, right, they didn't have -- I mean, they were not
3 trained. They were not -- they didn't -- I mean, the
4 accounting team, you know, in my recollection was usually never
5 involved; and I think towards the latter part of the project,
6 the accounting team wasn't involved at all, which is --
7 involved at all, which is super rare; right? Usually the
8 controller and the CFO and whomever are highly involved, and
9 there was just -- there was no user participation. So, like I
10 said, based on the number of issues, there's no way their
11 system was tested.

12 **Q.** Okay.

13 **MS. RAY:** I'll try to wrap up, if that's all right.

14 **Q.** Let's turn back to Trial Exhibit 142, which is the
15 sales -- the presentation that you made with the sales team in
16 November of 2013, and I just want to look at page 106.

17 Again, what are these? What's the slide at a high level?
18 This is the -- I'll let you get there.

19 **A.** Oh, yeah. It's right here.

20 **Q.** Yeah. That's fine. Do you recognize it?

21 **A.** Yeah.

22 **Q.** Okay. At a high level, what is this slide for?

23 **A.** So, again, this is -- like I said, this is one of the most
24 important slides in my presentation, which identifies the key
25 bullet points of what it takes to be successful in an

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1 implementation.

2 Q. Let's look at the first one, "Active participation from
3 executive sponsors." Did Grouse River follow this
4 recommendation?

5 A. They did not, no.

6 Q. What about the second one, "Nominate and develop an
7 administrator"? Did Grouse River follow that recommendation?

8 A. They did not. I mean, Kevin Rost was not equipped to
9 handle both roles.

10 Q. What about the next two bullet points, "Prioritize
11 requirements" and "Start small"? Did Grouse River follow those
12 recommendations?

13 A. I mean, you know, outside of improper staffing and lack of
14 Glenn being involved, you know, that was the next biggest
15 contributor to the delay of the overall project, is that the
16 number of enhancements, the number of additional functionality,
17 and the addition to scope, that's not starting small. That's
18 saying "I want everything all at the same time." And if you
19 want everything all at the same time and you add additional
20 features and scope to it, things become very complex and it
21 takes a really long time to Go-Live.

22 Q. What about number five, "Involve end users early and
23 often"? Was that something that Grouse River did as you
24 recommended?

25 A. Definitely not, no.

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1 **Q.** And then I think you pretty much covered number six.

2 **A.** Yeah.

3 **Q.** "Tightly manage scope and change control," was that what
4 you were talking about?

5 **A.** Right.

6 **Q.** And so did Grouse River follow that recommendation?

7 **A.** No, they did not.

8 **Q.** Mr. Murphy, are you aware that Mr. Fallis and Grouse River
9 are accusing you and your team of committing fraud?

10 **A.** Yes.

11 **Q.** Having gone through the extensive experience on this
12 project, how do you think -- do you think that anyone at
13 NetSuite did anything fraudulent to Grouse River?

14 **A.** I do not, no.

15 **Q.** How do you feel about being accused of fraud by
16 Grouse River?

17 **MR. SUSMAN:** Your Honor, I'd object. That's
18 irrelevant --

19 **THE COURT:** Well, I think it probably --

20 **MR. SUSMAN:** -- how he feels about it.

21 **THE COURT:** Well, it's his --

22 **MS. RAY:** It's his state of mind.

23 **THE COURT:** I'll overrule the objection, but it's a
24 small point, not a big one, so keep it a small point.

25 **MS. RAY:** Sure.

1 **THE WITNESS:** It doesn't feel good.

2 **MS. RAY:** That's it, Your Honor.

3 **THE COURT:** Okay.

4 All right. Any further examination, Mr. Susman?

5 **MR. SUSMAN:** Is she passing?

6 **THE COURT:** Yes, she has.

7 **MR. SUSMAN:** Yeah.

8 **THE COURT:** And to the extent you're able, it would be
9 better to keep it short.

10 **MR. SUSMAN:** It's short.

11 **THE COURT:** Okay. Just for our court reporter and the
12 jury's fatigue at this point.

13 **MR. SUSMAN:** I understand.

14 Let me see here...

15 **THE COURT:** I'm not doubting your intentions or
16 anything like that. I just meant --

17 **MR. SUSMAN:** Huh?

18 **THE COURT:** I'm not doubting anything other than just
19 that's what it's got to be now; and if we need more, we have to
20 come back tomorrow.

21 **REDIRECT EXAMINATION**

22 **BY MR. SUSMAN:**

23 **Q.** We began, and I don't have it here so I'm going to ask you
24 to recall it, with an e-mail from Cole Waldron to Mr. Fallis
25 after the presentation on November 26 setting forth some

1 answers to follow-up questions or questions that were posed in
2 the meeting, and one had to do with the ability to handle
3 serial numbers. Do you remember that?

4 A. Uh-huh.

5 Q. And the response that Mr. Waldron made in the e-mail that
6 we saw was (reading):

7 "If validation is required, we would have to do it at
8 the gun counter; but if it's not required, it could be
9 handled through the POS."

10 A. Uh-huh.

11 Q. Do you remember that?

12 A. Yes. I remember reading that, yes.

13 Q. Weren't you aware, sir, that Grouse River did not -- do
14 you know what "validation" means?

15 A. I do.

16 Q. What does "validation" mean?

17 A. It means that you're validating the serial number between
18 what's in the system and actually what's on the firearm.

19 Q. I'm sorry. If you have a serial number in front of you,
20 doesn't "validation" mean you're checking to see whether --
21 doesn't "validation" mean you're checking your inventory to see
22 that something is there? Isn't that what "validation" means?

23 A. What I just said, you're validating what's in the system
24 based on what's on hand versus what's on that firearm.

25 Q. But we're talking about things that are in the store, POS.

1 I pick up a product, this (indicating), a telescope, a gun, it
2 has a serial number on it. You don't have to validate a thing.
3 You just scan the serial number at the POS.

4 Didn't you understand that we didn't -- Mr. Fallis did not
5 need validation of serial numbers? He just needed to keep
6 track of them on the sales documents. He didn't need to check
7 inventory from a brick-and-mortar in-store sale because he had
8 the item there. Weren't you aware of that?

9 **A.** That's why we recommended the solution to use NetSuite.

10 **Q.** Well, Mr. Waldron said, "If validation is not required, we
11 can handle it." That was just false, wasn't it?

12 **A.** No. So NetSuite -- the point-of-sale system does allow
13 the ability to enter the serial number into the point of sale,
14 but what you're not hearing is that the communication between
15 the NetSuite -- the NetSuite point-of-sale register to NetSuite
16 was 15 minutes. So if I'm selling a serial good and I need to
17 validate it, I can't sit there and just wait for the customer,
18 you know, to stand there for 15 minutes. So being that we did
19 not have that solution of functionality in place, it was
20 recommended to use NetSuite.

21 **Q.** What are you talking about 15 minutes? There's no -- were
22 you aware that a customer comes into the store in Canada --
23 it's not like America. You have to have -- be cleared, the
24 background check, before you walk in and buy a firearm.
25 There's no waiting period. The customer can pay \$500 for the

1 gun or whatever it is and walks immediately. Where did you
2 come up with this waiting period problem?

3 A. Because that's what was communicated by Grouse River.

4 Q. Okay. You keep saying that Mr. Fallis was aware that he
5 was an early adopter in Canada; right?

6 A. Right.

7 Q. You never told him he was the first adopter, did you?

8 A. Oh, Glenn knew well what he was.

9 Q. That wasn't my question. Did you ever tell him that?

10 A. Tell him what? Sorry.

11 Q. What?

12 A. What's the question?

13 Q. Whether you ever told him that until -- he would be the
14 first omni-channel retailer in Canada using POS, ERP, and --

15 A. Yes. Glenn knew this.

16 Q. Again, did you tell him that, or how do you know what he
17 knew?

18 A. Because there was a conversation that we had in March to
19 address the final concerns that included Glenn, Cole, Gary, and
20 myself, and that was discussed.

21 Q. Was I right? Did I hear you say on direct examination
22 that you would never tell a customer that your solution or
23 software met all of their business -- detailed business
24 requirements because doing so would, as you just said to the
25 jury, "I wouldn't say that because it gets you into trouble"?

1 Did I remember that correctly?

2 **A.** Yeah, but you're not defining what "requirements" are.

3 **Q.** You said that Glenn -- Grouse River wouldn't sign the BRD
4 until we had a working serial number solution. Are you aware
5 that the first consultant you had working on the BRD quit and
6 lost the BRD documents?

7 **A.** That's actually not true. So she went to the first
8 on-site and captured the notes of the business process mapping
9 questionnaire. I can't verify whether she lost them or whether
10 we were able to recover them. We had the proper notes to
11 create the requirements document, but her -- her resignation --
12 you know, it's unfortunate the project had took so long to
13 start.

14 **Q.** Hunting trips.

15 **A.** Uh-huh.

16 **Q.** Did you know that Mr. Fallis, like almost every business
17 executive that you know, has a cell phone?

18 **A.** So there is communication that his cell phone did not
19 work.

20 **Q.** Excuse me?

21 **A.** So he had a satellite phone and it always -- and it didn't
22 always have reception.

23 **Q.** I'm not talking about a satellite phone. I'm talking
24 about a cell phone. Did you ever try to call him on his -- do
25 you know that on all except one of his hunting trips he had a

1 cell phone, was in cell phone reception, and you could have
2 called him on his cell phone?

3 A. Well, don't tell that to me. Tell that to his former
4 employees that couldn't get ahold of him.

5 Q. There was one time when he was off the grid, that's true;
6 but how many times when he was not off the grid but away did
7 you call him on his cell phone?

8 A. We had numerous conversations with Kevin and team that
9 they could not get ahold of Glenn.

10 Q. Am I correct when your lawyer asked you the question that
11 you said "I knew Grouse River had limited resources"?

12 A. Based on my conversation with Glenn in latter part of
13 July, early August, I then learned that things were pretty
14 lean, yes.

15 Q. When was the BRD document signed?

16 A. Beginning of September.

17 Q. If at the time it was signed 90 percent of the
18 implementation had taken place, as you are testifying, why did
19 it take September, October, November, December, January,
20 February, and March, which I count to be seven months --

21 A. So there's two reasons.

22 Q. -- to do 10 percent of the work?

23 A. Now, so --

24 Q. Explain to the jury, please, sir.

25 A. So when I said 90 percent of the configuration had been

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1 done, I said NetSuite ERP configuration had been done. So that
2 still included development -- that did not include the
3 development -- you know, continual development of the
4 eCommerce and point of sale. So my facts are right.

5 **MR. SUSMAN:** Pass the witness, Your Honor.

6 **THE COURT:** All right. Thank you. So you may be
7 excused.

8 **THE WITNESS:** All right. Thank you.

9 (Witness excused.)

10 **THE COURT:** And that's a wrap for today. Thank you,
11 everybody, for your tolerance. Remember the admonition, don't
12 talk about the case with anyone, do any independent research.
13 Otherwise, have a great rest of your day and we'll see you
14 tomorrow.

15 (Proceedings adjourned at 2:15 p.m.)

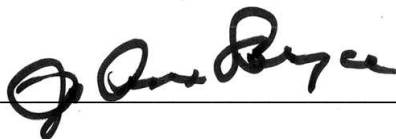
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CERTIFICATE OF REPORTERS

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Thursday, July 11, 2019

A handwritten signature in black ink, appearing to read "Jo Ann Bryce", written over a horizontal line.

Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
U.S. Court Reporter

A handwritten signature in black ink, appearing to read "Ana M. Dub", written over a horizontal line.

Ana M. Dub, CSR No. 7445, RDR, CRR
U.S. Court Reporter